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ABSTRACT

This document contains public testimony, prepared statements, and letters from the Congressional hearing on parental kidnaping. Following an opening statement by the committee chairman, Senator Arlen Specter, public testimony is given by representatives of the Criminal Division of the Department of Justice, the Criminal Investigative Division of the Federal Bureau of Investigation, the Office of Child Support Enforcement of the Office of Health and Human Services, the Office of the Legal Advisor of United States Department of State, the Milwaukee Municipal Courts, and the Alexandria, Virginia Police Department. Topics which are covered include interstate and international parental kidnaping, legislation, litigation, psychological needs of parents and children, the Hague Conference on Private International Law, and Operation Fingerprint. The text of Public Law 96-611 (of which the Parental Kidnaping Prevention Act of 1980 is a part) is presented, followed by the brief of the Lyons vs. Lyons case, heard before the Virginia Supreme Court. Testimony from the director of Children's Rights of Florida, Inc., and a statement by Jody Brant Smith, against extension of the Uniform Custody Act, are presented. A summary of the subcommittee review of parental kidnaping complaints by the FBI in 1982 and 1983 and the fifth report to congress on implementation of the Parental Kidnaping Prevention Act of 1980 are given. The text of letters to the committee and Senator Specter's correspondence with the Attorney General are included. (BL)

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PARENTAL KIDNAPING

ED245145

HEARING

BEFORE THE

SUBCOMMITTEE ON JUVENILE JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

TO EXAMINE AVAILABLE AND PROPOSED MEANS TO RESOLVE THE CASES OF INTERSTATE AND INTERNATIONAL PARENTAL KIDNAPING

MAY 25, 1983

Serial No. J-98-43

Printed for the use of the Committee on the Judiciary

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PARENTAL KIDNAPING

WEDNESDAY, MAY 25, 1983

U.S. Senate,
Subcommittee on Juvenile Justice,
Committee on the Judiciary,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Arlen Specter (chairman of the subcommittee) presiding.

Present: Senator Metzenbaum.

Staff present: Ellen Greenberg, professional staff member; and Mary Louise Westmoreland, counsel.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA, CHAIRMAN, SUBCOMMITTEE ON JUVENILE JUSTICE

Senator Specter. Good morning, ladies and gentleman. Today, in recognition of Missing Children's Day, we are conducting a hearing to examine available and proposed means to resolve the cases of interstate and international parental kidnaping. We will focus primarily on the ongoing efforts of Federal agencies and State and local law enforcement to implement the Parental Kidnaping Prevention Act of 1980.

In addition to evaluating the effectiveness of criminal remedies for interstate parental kidnaping, we will also examine the civil remedy for international parental kidnaping provided by the Hague convention on the Civil Aspects of International Child Abduction—a treaty that will be before the U.S. Senate for ratification in the coming months.

The incidence of parental kidnaping has increased dramatically over the past 5 years. It is now estimated that approximately 100,000 children are taken from their lawful custodians each year. Based on an independent review conducted by the staff of the Subcommittee on Juvenile Justice of the 390 parental kidnaping complaints received by the FBI in 1982, the average child victim of parental kidnaping could be aptly described as a 5-year-old male who is abducted by his 30-year-old noncustodial father and then taken across State lines. The growing problem of parental kidnaping recently received national attention with the widely publicized Federal ruling against Phil Donahue's production company in the amount of $5.9 million for damages for custodial interference.

As the problems of parental kidnaping have become more severe over the years, so too has society's response. In order to shield the presumably well-intentioned, noncustodial parent from criminal sanctions of the law, the Federal Kidnaping Act, more commonly known as the Lindbergh Act, was amended in 1934 to provide a specific exemption for parental kidnaping.

It was not until 1980 that Congress passed the Parental Kidnaping Prevention Act. Although this act does not make parental kidnaping a Federal offense, it mandates that full faith and credit be granted to custody orders of the States, it makes the informational resources of the Federal Parent Locator Service available to authorized persons in cases of parental kidnaping, and includes a declaration of intent that the Fugitive Felon Act apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution.

The Department of Justice, however, has declined to authorize FBI assistance unless there was independent, credible information that the child was in physical danger, or in a condition of abuse or neglect. In light of this failure to respond to the congressional directive, the subcommittee began an investigation and scheduled a hearing last December to clarify the intent of the act. On December 23, 1982, the Department of Justice announced that on a 1-year trial basis, it would begin full application of the Fugitive Felon Act to cases of parental kidnaping. And that, in effect, sets the stage for today's hearing.

We are pleased to have with us to review the progress under the new policy, Mr. Lawrence Lippe, who is currently Chief of the General Litigation Section of the Criminal Division of the Department of Justice. And he will be accompanied by Mr. Wayne Gilbert, Inspector-Deputy Assistant Director of the Criminal Investigative Division of the FBI, who will shed some light on the extent and scope of FBI involvement in parental kidnaping.

We have a very distinguished panel of witnesses who I will introduce as the hearing proceeds. I would now like to call our first panel Chief Lippe and Inspector-Deputy Assistant Director Gilbert.

Welcome, gentlemen. We very much appreciate your being with us and we look forward to your testimony. As it is our custom, your full statements will be made a part of the permanent record and we would ask that you summarize the highlights to leave the maximum amount of time for questions and answers.

Mr. Lippe, you may proceed.

STATEMENT OF A PANEL CONSISTING OF LAWRENCE LIPPE, CHIEF, GENERAL LITIGATION SECTION, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, AND WAYNE R. GILBERT, INSPECTOR-DEPUTY ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. Lippe. We thank you for the opportunity of appearing here today to discuss with this subcommittee the actions which the Department has taken to implement the Parental Kidnaping Prevention Act of 1980 as it relates to the issuance of unlawful flight to avoid prosecution warrants.

The unlawful flight statute makes it a Federal crime to travel in interstate or foreign commerce with the intent to avoid prosecution for a felony offense under the laws of the place from which the fugitive flees.

Most importantly, it should be remembered that to obtain an arrest warrant for unlawful flight, there must be probable cause to believe that an individual charged with a State felony offense has fled from that State and that his flight was for the purpose of avoiding prosecution.

The unlawful flight statute is not an alternative to interstate extradition. When the FBI locates and arrests an individual on an unlawful flight warrant, the arresting agents normally turn the fugitive over to law enforcement authorities in the asylum State to await extradition, or waiver of extradition, as the case may be, and the unlawful flight charge is at that time dismissed.

Therefore, we require as a matter of policy that any State law enforcement agency requesting FBI assistance under the unlawful flight statute give assurances that they are determined to take all necessary steps to secure the return of the fugitive from the asylum State and that it is their intention to bring the fugitive to trial on the State charges for which he is sought.

As the chairman remarked earlier, shortly after the passage of the Parental Kidnaping Prevention Act, the Department's policy guidelines which limited involvement in parental kidnaping were reviewed, modified, and they were made less restrictive.

It became the Department's policy that as a matter of prosecutorial discretion, the filing of unlawful flight complaints based on child custody-related felony offenses would be authorized if, in addition to having probable cause to believe that a violation of the unlawful flight statute had occurred and the requesting State law enforcement agency was committed to extradite and prosecute the offending parent, there also was independent, credible information that the victim child was in physical danger or was then in a condition of abuse or neglect.

Very simply, our policy guidelines were relaxed by reducing the standard from serious bodily harm to an abuse or neglect standard.

Senator SPECTER. Mr. Lippe, where did that standard come from that the FBI and the Department of Justice had implemented? Was that a standard you devised yourself?

Mr. LIPPE. It was a Department decision, yes. It was developed in the Criminal Division of the Department of Justice.

Senator SPECTER. How did that square, in your judgment, with the intent of Congress in the 1980 legislation?

Mr. LIPPE. In our judgment, Mr. Chairman, there was no conflict. In light of information and statistics that had been brought to our attention—the potential 100,000 figure that the chairman referred to earlier—we felt that in order to most effectively use the limited resources that both we and the FBI had, we had to impose upon the authority to issue UFAP warrants those particular guidelines, those criteria, so as to use this in a true criminal sense—to use criminal law enforcement resources in a criminal context.

Senator SPECTER. Mr. Lippe, I would like to explore with you for just a moment the way the Department comes to that kind of interpretation. And as I read section 10(a), it says the following:

> In view of the findings of the Congress and the purposes of Sections 6 to 10 of this Act, set forth in Section 302, the Congress hereby expressly declares its intent that Section 1073 of Title 18, United States Code, applies to cases involving parental kid-

napping and interstate or international flight to avoid prosecution under applicable state felony statutes.

Is that the only governing language from the statute, as you understand it?

Mr. LIPPE. In what context, if I may ask?

Senator SPECTER. In the context of what the Congress legislated on with respect to parental kidnaping.

Mr. LIPPE. Well, with respect to the act of 1980, yes, sir.

Senator SPECTER. All right.

Mr. LIPPE. I would want to add to that answer, though, that at all times we felt constrained in the exercise of our prosecutorial discretion to look at the UFAP statute in its entirety and, in so doing, to look at the legislative history of the unlawful flight statute itself.

Senator SPECTER. Well, Mr. Lippe, you have a very distinguished career in the prosecutorial role, and when you talk about prosecutorial discretion, I understand that you do so with considerable background and experience. Yet I, too, have some background as to what prosecutorial discretion means.

But where do you find, if at all, in the statute, or if you go behind the statute into legislative history, the standards which the Justice Department then articulated?

Mr. LIPPE. Those particular standards are not articulated or specified in the statute.

Senator SPECTER. Well, where do they come from? You have the standard of the child being in danger or the child being in a condition of abuse or neglect. Now, that is a significant variance from the flat statement of congressional enactment, which says that it applies to cases involving parental kidnaping.

It does not say that the parental kidnaping must rise to a level where the child is in danger, does it?

Mr. LIPPE. In that limited sense, no.

Senator SPECTER. In any statutory sense?

Mr. LIPPE. We have to put this in its total context, Mr. Chairman. Of course, as you know, we are no longer imposing those guidelines on the UFAP system.

Senator SPECTER. That is why we are taking it so lightly.

Mr. LIPPE. But in defense of the existence of the guidelines up until December of last year, we have stated on a number of occasions that we do not want to misuse or abuse the UFAP statute.

Senator SPECTER. The what statute?

Mr. LIPPE. UFAP, the unlawful flight statute; we refer to it as UFAP.

Senator SPECTER. Mr. Lippe, I understand where prosecutorial discretion goes. Prosecutors have traditionally ignored laws on the grounds of limited resources. There are many laws to be enforced and prosecutors choose those which are most important and apply resources accordingly.

There is a wide latitude given to prosecutorial discretion under the case law in this country. It has been described as boundless and limitless. It is very, very broad. What I am trying to trace with you here just in a moment or two is how the Department came to these standards.

It is a little different when there is a specific congressional direction on a specific subject, I would think, as to where the prosecutors ought to be going. It may be that the Department of Justice would have to come to Congress and say,

> You have given us a mandate which is so broad that it simply cannot be carried out with the resources we have, and if you, Congress, wish us to apply this as you have stated, we have to have more resources. Otherwise, we are going to have to apply it in a context of a more limited setting where the child is in danger or where there is a condition of abuse or neglect.

But the short answer is that the Department took those standards in its own judgment to apply them as best it could with the resources at hand and what it understood to be the gravity of the problem.

Mr. LIPPE. In addition to all of that, Mr. Chairman, we developed those standards based on experiences with State and local governments who were the requesting parties in terms of our issuance of these warrants. It was our experience that, for the most part, extradition would be sought by the State or local authorities only in those cases where there were some of the elements present in that standard which we described.

Senator SPECTER. Well, was the Department activated to do something before such a request was received from State or local authorities?

Mr. LIPPE. We cannot even consider the issuance of a UFAP warrant without such a request.

Senator SPECTER. All right. Would it be necessary for you to have put those standards in if the experience was that the State and local enforcements did not make the request absent these conditions?

Mr. LIPPE. Perhaps you misunderstood me. Frequently, requests would be received from the State and local authorities in situations where those elements were not present. Our experience demonstrated to us that in those instances rarely, if ever, would extradition be followed up on by that requesting state or local authority once the absconding parent was found.

Senator SPECTER. So that you found that they were not really serious unless there was a danger or a neglect situation?

Mr. LIPPE. In our experience, that is correct.

Senator SPECTER. If it was not serious, they did not pursue it?

Mr. LIPPE. That is correct.

Senator SPECTER. All right. Then, on December 23, 1982, the Department made a shift. What is the essence of the change in policy that the Department put into effect at the end of last year?

Mr. LIPPE. At the present time, unlawful flight warrants will be issued without those elements being necessarily present, upon appropriate request by a State or local authority. In other words, UFAP warrants in parental kidnaping situations will be issued as any other unlawful flight warrant would be issued, so long as the legal requirements are present that there be an underlying felony, that there be flight interstate, and that the flight was for the purpose of avoiding prosecution.

Senator SPECTER. For the record, why did the Department introduce this policy change on a 1-year trial basis?

Mr. LIPPE. From the day the Parental Kidnaping Act was enacted, our oversight role included a continuing review. By December 1982, it became apparent to us, Mr. Chairman, that our fears that absent these limiting criteria there would be an overwhelming number of requests received by us which would inundate us to the point where we could not have the resources to meet those requests, simply did not materialize.

The statistics and the data that we saw in front of us told us very simply that some of those predictions just simply did not materialize.

Senator SPECTER. What is the statistical base for the intervening 5 months since the Department has changed its policy?

Mr. LIPPE. I believe that we have issued approximately 40 warrants. If I may take a moment, I have that figure here.

Senator SPECTER. Please do.

Mr. LIPPE. As of May 20, my FBI colleague's figures reflect 51 warrants issued.

Senator SPECTER. How does that compare to a comparable period last year under the prior standard?

Mr. LIPPE. For the whole year of calendar 1982, 46 warrants were issued.

Senator SPECTER. So there is an increase, but it is not so onerous as to be beyond the capabilities of the Department and the Bureau to handle?

Mr. LIPPE. That is correct. We began to see that we were dealing with something perhaps on the order of, with the limiting standard, 46 to 50 or so in calendar 1982. And now we see, without the limiting standard, roughly 50 in a 4-to 5-month period. We would project that out to, say, 150 in a year, all of which are numbers which we can respond to and deal with effectively.

Senator SPECTER. What is your projection for an increase based upon the wide publicity given to your testimony today by the bright lights and the cameras?

Mr. LIPPE. I simply cannot do that, Mr. Chairman. I would have to just rely on what we have got so far. It is our understanding, and it has again been our experience that the Department of Justice's and the FBI's policies in these matters are well known to victims of parental kidnaping—to the victimized parents.

They have a number of organizations and they have a very fine information network. I would like to think that our change of policy in December was fairly well known to those who want to avail themselves of our resources.

Senator SPECTER. Mr. Lippe, how serious a problem is parental kidnaping in this country, in your judgment?

Mr. LIPPE. Any kidnaping is regarded by us as a serious situation. I do not think I am really that qualified to try to render an opinion on the magnitude of the problem.

Senator SPECTER. What are the consequences of parental kidnaping? Does that situation customarily find danger for the child or abuse of the child?

Mr. LIPPE. No, not necessarily. Again, limiting it to our experiences and those situations in which we have authorized the issuance of warrants or have made determinations not to authorize issuance of those warrants, frequently, as often as not, the abducting parent is a kind, loving parent who is doing this out of love for the child.

Senator SPECTER. When there is a situation where you have found neglect or danger, could you give us an illustration of what that danger or neglect might have been?

Mr. LIPPE. It takes a number of different forms. We have had parents who are alcoholics, parents who have psychiatric histories, histories of abuse of the child, in one degree or another.

We have an instance where the distraught parent killed the child and himself when he was about to be apprehended.

Senator SPECTER. How many cases like that have you seen?

Mr. LIPPE. Fortunately, only that one.

Senator SPECTER. And what happened in that case?

Mr. LIPPE. In that case, a warrant was issued under the more restrictive standard.

Senator SPECTER. And a father had abducted a child?

Mr. LIPPE. The father had abducted the child.

Senator SPECTER. And how old was the child?

Mr. LIPPE. The child was approximately 4 years old.

Senator SPECTER. And where did the abduction take place?

Mr. LIPPE. I do not recall the geographical location.

Senator SPECTER. And how far was the child taken?

Mr. LIPPE. A number of States away; it was not just a neighboring State, as I recall.

Senator SPECTER. And did the father have mental problems, alcoholic problems, or what?

Mr. LIPPE. I believe there was a history of psychiatric treatment; I cannot recall for what ailment. The father may have been a physician. My facts could be slightly in—the father was a physician. And there, as I recall, was a psychiatric history—one of the many factors which caused us to——

Senator SPECTER. And that father committed suicide and killed the 4-year-old boy?

Mr. LIPPE. As the father was about to be apprehended, and was aware that he was about to be apprehended, he took a hand gun, killed the boy, and then killed himself.

Senator SPECTER. And what situations have you found aside from this one you have testified about where the child has been in danger? I am trying to get some understanding for the record of the nature of the problem that we are confronting here.

Mr. LIPPE. In calendar year 1982, with respect to the 46 warrants which were issued, they were issued under the danger, abuse or neglect standard. To characterize the levels and the degree or the extent of the abuse or neglect that we feared, I guess I would have to say it ranged from a history of frequent slapping of the child or of neglect of the child in terms of the kinds of clothes the child would wear, on one end of the spectrum, to concerns for that child's physical well-being and his life. It ran the entire spectrum, Mr. Chairman.

Senator SPECTER. How able are local law enforcement agencies to deal with the problem of child abduction without the intervention of the FBI and Federal authorities?

Mr. **Lippe**. I would simply say that I would have to give about 50 different answers to that based on 50 different States and a myriad of jurisdictions within those States.

Senator **Specter**. Well, start with one.

Mr. **Lippe**. Some States have very effective law enforcement capabilities to learn the whereabouts of an abducting parent.

Senator **Specter**. How so? Is not the problem of a State dealing with interstate flight pretty much beyond the capabilities of the State, even taking the very best State with law enforcement resources—hypothetically, Pennsylvania?

Mr. **Lippe**. I would simply have to say that it varies from State to State.

Senator **Specter**. Well, my point is, is it not really necessary to bring in Federal authorities if there is to be any meaningful enforcement of abduction by parents of children across State lines?

Parents can move so far and so fast that a State, no matter how good it is, is really very hard put to allocate resources to trail and track down missing children and abducted children, are they not?

Mr. **Lippe**. The intervention of Federal law enforcement resources certainly can help. I am not prepared, however, to say that it is necessary in all cases. In many cases which are brought to our attention, when there is a request for the warrant, for example, the whereabouts of the abducting parent are already known and we find that the reason they are coming to us is because there are problems with getting the asylum State to go forward with extradition or other similar problems. This would suggest to me, Mr. Chairman, that prior to the intervention of Federal resources, there was apparently a capability, either on the part of the local law enforcement authorities or the aggrieved parent, or usually a combination of both, to learn the whereabouts of the abducting parent.

[The prepared statement of Mr. Lippe follows:]

PREPARED STATEMENT OF LAWRENCE LIPPE

Thank you for the opportunity of appearing here today to discuss with the Subcommittee the actions taken by the Department of Justice to implement the Parental Kidnaping Prevention Act of 1980 (PKPA) as it relates to the issuance of unlawful flight to avoid prosecution warrants. As you know, in Section 10 of the PKPA, Congress expressly declared its intent that the unlawful flight statute (18 U.S.C. 1073) apply to cases involving parental kidnaping and resulting interstate or international flight to avoid prosecution under applicable state felony statutes.

The unlawful flight statute makes it a Federal crime to travel in interstate or foreign commerce with the intent to avoid prosecution for a felony offense under the laws of the place from which the fugitive flees. To obtain an arrest warrant for unlawful flight, there must be probable cause to believe that an individual charged with a state felony offense has fled from that state and that his flight was for the purpose of avoiding prosecution.

Although drawn as a penal statute and, therefore, permitting prosecution in Federal court for its violation, the primary purpose of the unlawful flight statute is to provide the FBI with a jurisdictional basis for assisting state law enforcement agencies in the location and apprehension of fugitives from state justice. Therefore, prosecutions for violations of the unlawful flight statute are extremely rare. In fact, the statute prohibits prosecution unless formal written approval of the Attorney General or an Assistant Attorney General is obtained.

The unlawful flight statute is not an alternative to interstate extradition. When the FBI locates and arrests an individual on an unlawful flight warrant, the arresting agents normally turn the fugitive over to law enforcement authorities in the asylum state to await extradition or waiver of extradition, and the unlawful flight charge is then dismissed. Therefore, as a matter of policy, we require that any state law enforcement agency requesting FBI assistance, under the unlawful flight statute, give assurances that they are determined to take all necessary steps to secure the return of the fugitive from the asylum state, and that it is their intention to bring the fugitive to trial on the state charges for which he is sought.

Similarly, as a matter of policy, FBI assistance is not authorized when the location of the fugitive is known to the requesting state law enforcement agency. In such cases, the state seeking the fugitive can initiate an interstate extradition proceeding and request state law enforcement authorities in the asylum state to place the fugitive in custody until there has been a resolution of the extradition proceeding. More than twenty years ago, Congress recognized that the unlawful flight statute is a vehicle in aid of the extradition process; and that FBI involvement is normally limited to those criminal cases in which the state has demonstrated sufficient interest in obtaining the return of the fugitive to warrant incurring the necessary expense incident to extradition. H.R. Rep. No. 827, 87th Congress, 1st Session (1961).

Until recently, it had been a longstanding policy of the Department to avoid involving Federal law enforcement authorities in domestic relations controversies, including parental abduction situations. This policy had been based, in part, on the parental abduction exemption in the Federal kidnaping statute, from which we inferred a Congressional intent that Federal law enforcement agencies stay out of such controversies. Consistent with that policy, the Department, prior to the PKPA, did not authorize FBI involvement under the unlawful flight statute for the purpose of apprehending a parent charged with a child custody related felony offense. In rare instances, the Department made exceptions to this policy in situations where there was "convincing evidence that the child was in danger of serious bodily harm as a result of the mental condition or past behavior patterns of the abducting parent."

Shortly after passage of the PKPA, the Department's policy guidelines limiting involvement in parental kidnaping, under the unlawful flight statute, were reviewed, modified and made less restrictive. It became the Department's policy that, as a matter of prosecutorial discretion, the filing of unlawful flight complaints, based on child custody related felony offenses, would be authorized if, in addition to having probable cause to believe that a violation of the unlawful flight statute had occurred, and the requesting state law enforcement agency was committed to extradite and prosecute the offending parent, there also was independent credible information that the victim child was in physical danger or was then in a condition of abuse or neglect. Very simply, our policy guidelines were relaxed by reducing the standard from "serious bodily harm" to an "abuse or neglect" standard. Further, in an effort to achieve a uniform nationwide application of these policy guidelines, we required Criminal Division authorization prior to the filing of such complaints.

The PKPA also requires the Attorney General to report semi-annually to the Congress on the Department's implmentation of the Act. It was determined that the FBI would assume responsibility for compiling data relating to parental kidnaping complaints. It was also decided that in keeping with the spirit of the PKPA, the FBI would compile data on all complaints alleging parental abductions, rather than limiting the data only to requests received from state law enforcement agencies. Since passage of the PKPA, the Department has submitted five reports to the Congress setting forth our efforts to implement the Act as well as the accumulated statistical data relating to the issuance of unlawful flight warrants in child custody related felony cases.

In calendar year 1981, the Department took action on 129 law enforcement requests for unlawful flight warrants in parental kidnaping cases. Consistent with our parental kidnaping policy guidelines, FBI involvement was authorized in 48 cases and was declined in 81 cases. In calendar year 1982, FBI involvement was authorized in 46 such cases and was declined in 36 cases. Although there was no formal data compilation prior to the PKPA, the FBI has informed us that in the seven years prior to the PKPA, FBI involvement was authorized in a total of 49 cases, an average of seven cases per year. Clearly, there was a significant increase in the level of FBI involvement in parental kidnapings in the first two years after passage of the PKPA.

As you know, our parental kidnaping policy guidelines have been the subject of considerable criticism by members of Congress and others. We think it is important to note, however, that of the 117 law enforcement requests that were declined in 1981 and 1982, a substantial number of these requests were declined for reasons wholly independent of our parental kidnaping policy guidelines. For example, we regularly received requests for FBI involvement in situations in which the accused parent was living at a known location in another state, or in which the accused parent had obtained a presumptively valid custody decree in another state. Clearly, there was no need for FBI fugitive hunts in such situations.

Based on numerous inquiries received by the Department, it appears that many complaining parents and others are under the mistaken impression that the PKPA authorizes the FBI to seek an unlawful flight warrant based on the parent's complaint, as opposed to a state law enforcement request. It further appears that many concerned parents are under the mistaken impression that an unlawful flight warrant authorizes the FBI to locate and return abducted children to the custodial parents. In response to inquiries from FBI agents in the field, we have advised that the PKPA and the unlawful flight statute confer no authority on the arresting agents to take custody of a fugitive's child. Very simply, an unlawful flight warrant gives the arresting agents authority to take into custody only the person or persons named in the warrant. We further suggested that when a fugitive is arrested in the company of a child, it may be proper and appropriate to leave the child with a responsible adult relative or friend of the fugitive. If no responsible adult is available, the arresting agents would arrange for the local child welfare agency to take custody of the child.

In the latter part of 1982, the Department undertook another review of the parental kidnaping policy guidelines. As a result of this review, a determination was made that the guidelines would be suspended indefinitely. This policy decision was communicated to all United States Attorneys' Offices by a teletype dated December 23, 1983. In approximately one year, we will review this policy change. As a result of this decision, parental kidnaping felonies now are handled on the same basis as other fugitive felon requests. In the first three months after suspension of the guidelines, FBI involvement was authorized in 38 parental kidnaping felony cases and was declined in 3 cases.

It continues to be the Department's position that the unlawful flight statute is to be used for the purpose of assisting state law enforcement authorities in serious criminal cases, and that the statute should not be used merely as a pretext for enforcing compliance with child custody decrees. Unfortunately, our experience has shown that, in some cases, state prosecutors have declined to seek extradition of accused parents, arrested on unlawful flight warrants, the issuance of which they had requested. We have advised United States Attorneys that care should be taken not to authorize warrants where there is reason to believe the state will not extradite and prosecute once the fugitive is located and arrested by the FBI.

Since December 23, 1982, authorization to file unlawful complaints in child custody related felony offenses is a matter entirely within the sound discretion of the various United States Attorneys. The Criminal Division, of course, remains available for consultation and advice in all fugitive cases. We expect that this policy change will significantly increase FBI assistance to state law enforcement agencies seeking fugitives wanted for parental kidnaping felony prosecutions.

U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General
Washington, D.C. 20530

JAN 04 1983

Honorable Arlen Specter
United States Senate
Washington, D. C. 20510

Dear Senator Specter:

This is with respect to your longstanding interest in Department of Justice prosecution policy in parental kidnaping cases. I am pleased to report that the Department is modifying its policy to expand the number of cases in which federal officials will be seeking to locate and apprehend parents who have been charged with State felony offenses involving custodial interference.

By way of background, the legislative history of the Parental Kidnaping Prevention Act of 1980 urged the Department to take a more active role in seeking to locate and apprehend persons charged with parental kidnaping cases constituting a State felony. In the nearly two years since passage of that Act, the Department's policy has been to file Fugitive Felon complaints in child custody cases only if, in addition to having probable cause to believe that a violation of the Fugitive Felon Act (18 U.S.C. 1073) has occurred, the requesting State law enforcement agency is committed to extradite and prosecute the offending parent, there is independent credible information that the victim child is in physical danger or is then in a condition of abuse or neglect and the Criminal Division has authorized filing of a fugitive felon complaint. These last two requirements -- that the child be in danger or a condition of abuse or neglect and that the Criminal Division authorize parental kidnaping complaints -- have provoked controversy as they are felt to restrict very substantially federal involvement in such cases.

Responding to calls for expanded federal involvement in parental kidnaping cases, the "danger, abuse or neglect" requirement and the requirement of Criminal Division authorization are being rescinded for a one-year period. In short, for a one-year trial period parental kidnaping cases will be handled on the same basis as other fugitive felon cases. The effect of this policy change will be to increase the number of cases in which fugitive felon warrants will be obtained by United States Attorneys and fugitive investigations initiated by the Federal Bureau of Investigation.

Again, I am pleased to be able to announce this change in policy as I know how concerned you and many of your colleagues have been over the more restrictive policy which has been in force. Of course, I hope you will not hesitate to call on me if you have questions regarding the new policy.

Sincerely,

SIGNED

Robert A. McConnell
Assistant Attorney General

1 UFAP + PK

TELEGRAPHIC MESSAGE

NAME OF AGENCY DEPARTMENT OF JUSTICE GENERAL LITIGATION & LEGAL ADVICE SECTION CRIMINAL DIVISION LL:EHF:ibm	PRECEDENCE ACTION INFO	SECURITY CLASSIFICATION UNCLASSIFIED
ACCOUNTING CLASSIFICATION 3 B 1317	DATE PREPARED DECEMBER 23, 1982	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME EZRA H. FRIEDMAN	PHONE NUMBER 202 724-6971	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO: ALL UNITED STATES ATTORNEYS

RE: PARENTAL KIDNAPINGS - FUGITIVE FELON ACT

REFERENCE IS MADE TO UNITED STATES ATTORNEYS' MANUAL, SECTION 9-69.421 (PARENTAL KIDNAPING).

EFFECTIVE IMMEDIATELY THE TWO REQUIREMENTS OF USAM SECTION 9-69.421 - THAT THERE BE EVIDENCE THAT THE VICTIM CHILD IS IN PHYSICAL DANGER OR IN A CONDITION OF ABUSE OR NEGLECT, AND THAT CRIMINAL DIVISION APPROVAL BE SECURED BEFORE A COMPLAINT MAY BE FILED UNDER THE FUGITIVE FELON ACT-ARE SUSPENDED ~~INDEFINITELY~~ UNTIL FURTHER NOTICE. TO ALLOW THE FBI AND THE CRIMINAL DIVISION TO MONITOR THE EFFECT UPON THE BUREAU'S CASELOAD RESULTING FROM THIS ACTION OVER A ONE-YEAR PERIOD, YOU ARE REQUESTED TO CONTINUE TO REPORT REQUESTS FOR ASSISTANCE TO THE BUREAU WHETHER OR NOT COMPLAINTS ARE AUTHORIZED. IN ORDER TO ASSIST THE BUREAU IN DETERMINING THE APPROPRIATE PRIORITY TO ASSIGN THE WARRANT, YOU ARE ALSO REQUESTED, WHEN THE INITIAL CONTACT IS MADE WITH YOUR OFFICE, TO ASCERTAIN INFORMATION RELATIVE TO THE DANGER TO THE CHILD AND OTHERS POSED BY THE ABDUCTING PARENT. AS IN OTHER

USA

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1	2	UNCLASSIFIED

STANDARD FORM 14
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14-108

TELEGRAPHIC MESSAGE

NAME OF AGENCY
DEPARTMENT OF JUSTICE

PRECEDENCE
ACTION:
INFO:

SECURITY CLASSIFICATION

ACCOUNTING CLASSIFICATION
3B 1317

DATE PREPARED

TYPE OF MESSAGE
☐ SINGLE
☐ BOOK
☐ MULTIPLE-ADDRESS

FOR INFORMATION CALL

NAME
EZRA H. FRIEDMAN

PHONE NUMBER
202 724-6971

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED (Use double spacing and all capital letters)

TO:

FUGITIVE FELON CASES THE FIELD OFFICE WILL ASSIGN THE PRIORITY. PLEASE BEAR IN MIND THAT THE FUGITIVE FELON ACT WAS ENACTED TO ASSIST THE STATES IN THEIR EFFORTS TO APPREHEND AND PROSECUTE CRIMINALS WHO HAVE GONE BEYOND THEIR JURISDICTION. ACCORDINGLY, CARE SHOULD BE TAKEN NOT TO AUTHORIZE WARRANTS WHERE THERE IS REASON TO BELIEVE THAT THE STATE WILL NOT EXTRADITE AND PROSECUTE ONCE THE FUGITIVE IS LOCATED AND ARRESTED BY THE FBI.

ATTORNEYS FAMILIAR WITH THIS POLICY ARE AVAILABLE ON FTS 724-7526, 6971, AND 6893.

LAWRENCE LIPPE, CHIEF
GENERAL LITIGATION AND
LEGAL ADVICE SECTION
CRIMINAL DIVISION

PAGE NO.	NO. OF PGS.	SECURITY CLASSIFICATION
2	2	UNCLASSIFIED

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Senator **Specter**. Mr. Gilbert, I would be interested in your judgment on that question. To what extent is Federal intervention necessary? To what extent is it necessary for the FBI to enter these cases in order to see to it that the abducted children are returned? Can States handle this problem for themselves?

STATEMENT OF WAYNE R. GILBERT

Mr. **Gilbert**. In a lot of cases, yes. Let me put it in perspective. In my experience, most major police departments have fugitive squads with fugitive apprehension capability. To put it in perspective again, there are approximately 200,000 fugitives in NCIC, the National Crime Information Center, that we manage right now, today.

Senator **Specter**. 200,000 fugitives?

Mr. **Gilbert**. Over 200,000. There are approximately—and this is an approximation on my part; I am not an NCIC expert—50,000 of those fugitives are wanted for violent crimes.

In any given year, the FBI will receive requests and work on approximately 2,600 unlawful flight cases; that is, 2,600 out of 200,000. So, most of your police departments, I think, are capable of arresting a fugitive. Extraditionwise, from the district attorney's standpoint or the States attorney's standpoint, there may be some problems.

Senator **Specter**. Well, if someone flees from, say, Washington, D.C., and is apprehended on another charge in Kansas City, Mo., there will be a national records check?

Mr. **Gilbert**. Yes, sir.

Senator **Specter**. The matter will come through the FBI national records, and frequently the Washington, D.C., authorities will be notified that the person is in Kansas City, Mo.

Mr. **Gilbert**. Automatically, yes.

Senator **Specter**. And then it is a question of extradition—a request from law enforcement authorities in the District of Columbia through the Governor's office in Missouri, et cetera?

Mr. **Gilbert**. Yes, sir.

Senator **Specter**. So that the central point for reference is the existence of the FBI clearinghouse?

Mr. **Gilbert**. Frequently, yes.

Senator **Specter**. Absent that, how would anybody in Missouri know that John Defendant had fled from the District of Columbia?

Mr. **Gilbert**. They would not.

Senator **Specter**. They could not possibly know. So, that is a first step in the processing of child abduction cases. They are put into the FBI central records so that if the person is picked up anywhere else, it will show that he is wanted, say, in Washington, D.C., on child abduction?

Mr. **Gilbert**. Yes. That has been done since 1975.

Senator **Specter**. All right. Now, what other steps does the FBI take? If it is one of the cases where you know that the person has fled to Kansas City, Mo., then it is a relatively simple matter. You contact the Missouri authorities and you take steps to try to have the child returned.

It is a different issue to have the child returned than to have the defendant returned. To have the defendant returned, you have got to go through complex interstate extradition procedures. But to get the child returned, what do you have to do?

Mr. GILBERT. We are not involved in that. The Federal Government is not involved in the return of the child; all we are involved in is the return of the subject.

Senator SPECTER. You are just involved in returning the accused?

Mr. GILBERT. The individual who was arrested, yes, sir.

Senator SPECTER. What is your judgment, Mr. Gilbert, as to how well the new policy is working out?

Mr. GILBERT. We have had no major problems with the new policy. As Mr. Lippe indicated, we have not been inundated with requests and it has been manageable at this point.

Senator SPECTER. How much by way of additional resources, if any, have the Department of Justice and the FBI allocated since the new policy was put into operation?

Mr. GILBERT. Specifically, there have been no additional resources by the FBI. We work them as unlawful flight cases, as part of a general unlawful flight program that we operate and have operated for years.

Senator SPECTER. How many men and women do you have in that line?

Mr. GILBERT. We utilize approximately 180 to 190 agent man-years, using this budget terminology. About 180 to 190 agents a year work unlawful flight cases full time; that is, crimes of violence, major property crimes, narcotics crimes, and the parental kidnaping fugitives.

Senator SPECTER. How many parental kidnaping cases were reported to the FBI in 1981?

Mr. GILBERT. We had 896 complaints.

Senator SPECTER. 896 complaints?

Mr. GILBERT. Yes, individuals who contacted us inquiring about parental kidnapings.

Senator SPECTER. And on how many of those did you act?

Mr. GILBERT. There were 48 unlawful flight warrants issued.

Senator SPECTER. And in 1982, you had 46 unlawful flight warrants issued?

Mr. GILBERT. Yes, sir.

Senator SPECTER. And how many complaints did you have?

Mr. GILBERT. 592.

Senator SPECTER. And in 1983, up to May 20, there has been testimony of 51 warrants issued, and how many complaints have you received?

Mr. GILBERT. 245.

Senator SPECTER. So your complaints are just about on a par, on a pro rata basis, with 1982?

Mr. GILBERT. Yes, sir.

Senator SPECTER. And you have issued more warrants?

Mr. GILBERT. Yes, sir.

Senator SPECTER. I understand that an assessment of danger is still requested of U.S. attorneys and is pivotal in determining whether the case is given an A or a C priority classification.

Would you describe this fugitive priority classification system for us?

Mr. GILBERT. Certainly. We have the three priorities; it is strictly a management tool that we use within the FBI to manage our resources and manage the cases. We assign the category of A, B, or C.

First of all, let me say that all fugitive cases in the Bureau are priority cases. They have traditionally been priority cases and they will continue to be priority cases. That is an order by a Federal judge for us to arrest an individual, so it is a priority.

But within the program, we assign the A, B, C categories. The A category generally involves a fugitive who is wanted for a crime of violence or has a history of crimes of violence—crimes against persons: murder, aggravated assault, rape, that type of crime.

The B category of fugitives are major property violators or narcotics offenders, and in the C category are all others.

Now, under the previous guidelines, prior to December, the parental kidnaping fugitives were all in the A category because there was a clear and present danger to the child—indications of that.

Senator SPECTER. The subcommittee's review of the FBI's parental kidnaping reporting form showed that the vast majority of cases are reported to the FBI by the aggrieved parent or relative. What are the field division offices instructed to do in such cases, and is there an affirmative obligation on the part of the FBI agent to instruct the parent as to the proper course of action and direct the parent to State law enforcement authorities?

Mr. GILBERT. Yes, sir. That is true in all of our offices as far as any complaint that is made to us. We get complaints that take the whole range of violations that we work and the complaint clerks and complaint agents are instructed to analyze the complaint, and if it is not within our Federal jurisdiction, then they refer it to the appropriate authority.

Under the Missing Children Act, there are some very specific things that they have to do as far as entering the individual in NCIC.

[The prepared statement of Mr. Gilbert follows:]

PREPARED STATEMENT OF WAYNE R. GILBERT

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear here today to discuss with the Subcommittee the FBI's role in the implementation of the Parental Kidnaping Prevention Act of 1980. This Act provides, at Section 10, that the Federal Fugitive Felon Act applies to cases involving parental kidnaping.

I would like to describe how the FBI becomes involved in these cases. First of all, the parental kidnaping must involve interstate or international flight. Further, as is true in all unlawful flight matters, the request for FBI assistance has to be made by state or local law enforcement authorities in writing to the United States Attorney after the issuance of a local felony warrant, and the local authorities must agree to extradite and prosecute the subjects upon apprehension. Then, the United States Attorney must authorize an FBI Agent to apply to a Magistrate for an Unlawful Flight to Avoid Prosecution warrant. If the Magistrate or judge issues a warrant, the FBI immediately initiates an investigation.

Beginning in January, 1983, the Department of Justice suspended two additional requirements which had existed for applying for an Unlawful Flight to Avoid Prosecution warrant in parental kidnaping cases: Evidence that the victim child is in physical danger or in a condition of abuse or neglect, and Department of Justice Criminal Division approval.

Almost on a daily basis, FBI Headquarters (FBIHQ) receives information from our field offices about complaints from parents, guardians, or other state or Federal officials concerning a possible parental kidnaping matter. All complaints are recorded and forwarded to FBIHQ even though they may not meet the criteria for FBI involvement. For example, if the FBI has been advised by the complainant that the parent who has taken the child is still within the state boundries, the FBI could not become involved in this matter.

Let me provide you a statistical picture of parental kidnaping cases. During 1981, FBIHQ received 896 complaints from 58 field offices covering 52 states and United States territories. Of these complaints, 689, which did not meet the criteria for FBI involvement, were referred to local authorities. During this period of time, the Department of Justice, in 48 cases, authorized our applying for Unlawful Flight to Avoid Prosecution warrants. As a result of our investigations and the cooperation of local authorities and other Federal agencies, 22 individuals were arrested, ten by the FBI, one by another Federal agency, and eleven by local law enforcement authorities.

In 1982, 592 parental kidnaping complaints were received by FBIHQ from 53 field divisions covering 46 states and United States territories. In that year, 474 of these complaints were referred to local authorities. Unlawful Flight to Avoid Prosecution warrants were authorized in 46 cases, resulting in 18 arrests by the FBI and 14 arrests by local law enforcement authorities.

During the first four months of 1983, 202 parental kidnaping complaints were received from 40 field divisions covering 32 states and United States territories. Of these complaints, 141 were referred to local authorities. Unlawful Flight to Avoid Prosecution warrants were authorized in 48 cases, resulting in seven arrests by the FBI and one arrest by local law enforcement authorities.

Because it can be difficult to see people in statistical pictures, I would like to tell you about a recent case. In a Southeastern city of the United States, on April 29, 1982, one of our FBI field offices received a communication from the United States Attorney's Office of that area reporting that the natural mother of a four-year-old child and her current husband had removed her child from that state, contrary to a state court order. The State's Attorney pledged to extradite and prosecute these two individuals and requested a Federal Warrant for Unlawful Flight to Avoid Prosecution. The child's natural mother had a history of child abuse involving older children and prior abandonment and neglect of the victim child.

On May 3, 1982, this FBI field office informed FBIHQ of the situation and requested Department of Justice authority to file a complaint. On May 4, 1982, the Department of Justice authorized us to apply for an Unlawful Flight to Avoid Prosecutio warrant for these two individuals. On May 5, 1982, this FBI field office sent a teletype to other specific field divisions throughout the country requesting investigative assistance. On May 7, 1982, both subjects were arrested by the FBI in a West Coast city.

This case illustrates the manner in which the FBI attempts to resolve those parental kidnaping cases within any jurisdiction. The Bureau remains committed to discharging effectively its responsibilities under the Parental Kidnaping Prevention Act.

Senator SPECTER. Well, gentlemen, we are delighted to see that there is this broader approach taken, that the danger or neglect standards have been changed, and that there is more activity on the part of the FBI and the Department of Justice.

We have been joined by the distinguished Senator from Ohio, Mr. Metzenbaum. I had just about concluded the questions which I had, unless you gentlemen have anything that you would like to bring to the committee's attention.

Mr. LIPPE. I have nothing further, Mr. Chairman.

Senator METZENBAUM. I have no questions, Mr. Chairman. As a matter of fact, I came because I appreciate your leadership in this area and I have a concern. There are too damn many committee hearings going on at the same time at the moment.

Senator SPECTER. Too what?

Senator METZENBAUM. Too damn many, d-a-m-n.

Senator SPECTER. That is what I thought you said. [Laughter.]

I thought the reporter was unsure.

Senator METZENBAUM. I do have a strong interest in this legislation and your concern about it, and I just wanted to come over to indicate that I share that concern.

Senator SPECTER. Well, Senator Metzenbaum has been in the forefront of this field for a long while and I very much appreciate his counseling and his help.

Thank you very much, gentlemen. That concludes panel 1. I have to go to the Senate floor for just a few minutes. Senator Metzenbaum, would you be willing to continue the hearing in my absence?

[Whereupon, Senator Metzenbaum assumed the chair.]

Senator METZENBAUM. The next witness is Mr. Fred Schutzman, Deputy Director, Office of Child Support Enforcement, U.S. Department of Health and Human Services.

I just wanted to know, how did you know I was going to walk in at that point? You do not need to answer; you can take the fifth.

Senator SPECTER. Clairvoyance; I have been here 2 years now.

Senator METZENBAUM. Please proceed, Mr. Schutzman.

STATEMENT OF FRED SCHUTZMAN, DEPUTY DIRECTOR, OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. SCHUTZMAN. I appreciate the opportunity to be here today to provide information on the role of my office, the Office of Child Support Enforcement, and the Federal Parent Locator Service, in parental kidnaping and child custody cases.

In accordance with the chairman's request, I will summarize my full statement. To give perspective to my testimony, I would like to take a minute to discuss the child support enforcement program and the principles upon which it is based.

The program is a Federal-State effort to establish paternity of children who have been deserted or abandoned, and to insure that absent parents provide support payments for their children.

The main goals of the program are to insure that children are supported financially by their parents, to foster family responsibility, and to reduce the cost of welfare to the taxpayer. The program is succeeding.

Frequently, in striving to obtain our goal of enforcing child support, it is necessary to locate an absent parent. The Federal Parent Locator Service was established to assist States in their effort to track down absent parents who were ignoring their financial responsibility to support their children.

Public Law 96–611 expanded this role by authorizing the use of the Federal Parent Locator Service to locate children or individuals who have taken children in violation of a court custody order or for the purpose of enforcing any State or Federal law related to the illegal taking or restraint of a child.

States that want to use the Federal Parent Locator Service for these purposes must enter into an agreement with the Secretary of Health and Human Services.

In fiscal year 1982 and to date in this fiscal year, there have been 68 requests for information from the Federal Parent Locator Service related to parental kidnaping. Fifteen of the requests came from U.S. attorneys and the remainder from 10 States.

Address information from the Federal Parent Locator Service was provided for 70 percent of the requests. As far as we have been able to ascertain, a total of 15 parents believed to have absconded with children have been located as a result of this service.

State Parent Locator Service offices are not routinely informed by the courts and the law enforcement officers of the ultimate disposition of a child custody or parental kidnaping case. Therefore, I am unable to indicate the true effectiveness of these locations.

The main sources of home and employer addresses available to the Federal Parent Locator Service are the records of the Social Security Administration and the Internal Revenue Service. Both of these agencies have annual reporting requirements. Employers begin reporting earnings information to the Social Security Administration [SSA] in April and the Social Security Administration completes its update of its files in the fall. The Internal Reveune Service [IRS] records are updated completely by September following the April personal income tax filing deadline of each year. A request to the Federal Parent Locator Service for location of a recently kidnaped child or the individual believed to have taken the child is more likely to be useful when the information is updated.

That concludes my summary. I would be glad to answer any questions.

Senator **Metzenbaum**. You made a very broad statement on the first page in which you say the program is succeeding, and then you say that as far as you are able to ascertain, there may be 15 parents believed to have absconded with children and have been located as a result of this service.

Mr. **Schutzman**. In my reference to the program succeeding, I was talking about my program, the child support enforcement program, not the use of the Federal Parent Locator Service with regard to parental kidnaping.

Senator **Metzenbaum**. You say your program, the child support enforcement program—you operate both, is that it, or what do you have to do with the Federal Parent Locator Service?

Mr. **Schutzman**. That is one of the functions that my office performs. We assist States in locating parents in order to obtain child support.

Senator **Metzenbaum**. Mr. Schutzman, do I understand that the only two things you do are look at the IRS forms and the SSA forms?

Mr. **Schutzman**. Those are our main sources of information. We can interface, and have, with the Department of Defense records, the Veterans' Administration, and Civil Service records.

Senator **Metzenbaum**. What do you do? I know what you can do. What do you do?

Mr. **Schutzman**. The request usually specifies what location services are required. Our main sources really are the IRS—they have the most current information—and the Social Security Administration.

Senator **Metzenbaum**. I do not gather from your response that there is an affirmative kind of program that the child locater program has, other than you say if they request it, we go beyond the SSA and the Internal Revenue Service records.

Mr. **Schutzman**. That is correct, because the IRS records and the social security records are the most complete and usually the most up-to-date records we have.

Senator **Metzenbaum**. Yes, but they are also very much behind the times. As you indicated, if a person has a child and is moving around with the child, you would not be very successful.

Now, the real thrust of my question is, under the law do you have an affirmative obligation to do something over and beyond that which you are doing? It is a rather new program, but I do not get the feeling that there is that much innovative thinking that is taking place in your department and I would like to know more about it. If you are not doing more innovative thinking, then I would like to prod you to do more.

Mr. **Schutzman**. Senator Metzenbaum, I disagree with your statement. We have looked at other sources of this information. During this past year, as a matter of fact, we have checked with the Postal Service and we have looked at Selective Service records, and other Federal agencies.

We have been experimenting with interfacing with those records. We find that those records are not as good as the records that we now search.

Senator **Metzenbaum**. Let me ask you, if a child is lost or disappears in Cleveland and the police department there tries to find that child who may have been taken for one of several reasons—would the police department in Seattle do anything about that, and can the Federal Government be helpful in any way in providing a network of police agencies to be helpful?

Mr. **Schutzman**. I am not qualified to answer that question. As I indicated, we attempt in our child support enforcement program to locate parents continuously. For example, we had 235,000 requests for location purposes in fiscal year 1982.

Senator **Metzenbaum**. How many?

Mr. **Schutzman**. We had 235,000 location requests for the child support enforcement program, of which we have located 80 percent, or provided location information to the States on 80 percent of those cases.

Senator **Metzenbaum**. Are parental kidnaping requests a priority of the Parent Locator Service?

Mr. **Schutzman**. Our response to any request is usually provided to within a period of 2 or 3 weeks, which we think is quite a good service.

Senator **Metzenbaum**. Well, I really do not know if that answers the question.

Mr. **Schutzman**. No, it is not treated in any different fashion than the normal requests we get in for Federal Parent Locator Service information.

Senator **Metzenbaum**. Do you think they should be?

Mr. **Schutzman**. It would not, in my opinion, speed up the process because we feel that the 2- to 3-week response that we now have is sufficient.

Senator **Metzenbaum**. What are you doing to make your services more complete, efficient, and useful?

Mr. **Schutzman**. As I indicated, we have experimented, using other Federal agencies' files such as the Postal Service, the Selective Service, individual military records. We have found that those records are not as useful to us as the Internal Revenue Service and the Social Security Administration's records.

Senator **Metzenbaum**. What other steps are you taking, if any?

Mr. **Schutzman**. In order for us to supply information to the States, we require agreements with those States. As of this moment, we have agreements with 18 States, 3 others pending, and 5 additional States that have indicated some interest in the program.

We have in the past publicized the program. One of my staff members put together a handbook describing the program, with common questions and answers, and rules and regulations, and we have transmitted this to various State people through conferences and other means of communication.

What we intend to do again—it was done once before—is have the Secretary of the Department of Health and Human Services write to each of the governors of those States with which we do not have agreements and urge them to enter into agreements with us.

Senator **Metzenbaum**. How big a staff do you have?

Mr. **Schutzman**. I have a staff of approximately 300 people.

Senator **Metzenbaum**. And your budget?

Mr. **Schutzman**. The budget is approximately, if you are talking about salaries and expenses, $18 million.

Senator **Metzenbaum**. How do those 300 people spend most of their time, since it seems to me that a request from the IRS or from the Social Security Administration is not a very complicated kind of procedure? You could almost do that routinely.

Mr. **Schutzman**. No, it is not.

Senator **Metzenbaum**. What else do they do?

Mr. **Schutzman**. Our staff is fully involved with the child support enforcement program nationwide. We develop and implement the policies. We provide the financial resources for the program. We monitor the States' efforts in our program and we provide technical assistance to the States.

Senator Metzenbaum. Now, tell me what they do. All you have told me is some generalities. You monitor.

Mr. Schutzman. I can give you some very specific——

Senator Metzenbaum. Tell me what the 300 people do.

Mr. Schutzman. I can give you specifics. We have a group of people who write our regulations.

Senator Metzenbaum. Well, that does not get many children back.

Mr. Schutzman. I was talking about the child support enforcement program.

Senator Metzenbaum. That is the one that has the $18 million budget?

Mr. Schutzman. Yes.

Senator Metzenbaum. OK. What do they do?

Mr. Schutzman. We provide much technical assistance to the States. For example, we are working in urban areas to try to improve the child support enforcement program; we are working in a number of those areas. If you would like me to mention them——

Senator Metzenbaum. Please do.

Mr. Schutzman. They are Essex County; Newark, N.J.

Senator Metzenbaum. No. I mean what are you doing in those counties?

Mr. Schutzman. We are doing some reviews of the program. We are doing a management analysis, suggesting modifications to the program, and actually helping them implement those changes in order to improve the program.

Senator Metzenbaum. Proceed. I am really interested to know what the 300 people do on a day-by-day basis. I do not mean each one, but I have some difficulty comprehending.

Mr. Schutzman. Yes.

Senator Metzenbaum. Really, what you are saying is you use the IRS and the Social Security Administration. That does not take 300 people.

Mr. Schutzman. I think you are missing the point.

Senator Metzenbaum. I am sure I am, so you make it to me so I can understand it.

Mr. Schutzman. When we said we used the IRS and the Social Security Administration, we were talking about just one function of my office, which is the operation of the Federal Parent Locator Service. That is only one small function and only a small number of people are devoted to that function, because most of that function is automated.

Senator Metzenbaum. OK. Now, tell us about the other functions that your people perform.

Mr. Schutzman. As I said, our major function is to develop and implement policy and we have a group of people that write and interpret the policy. We have a group of people that deal with automated data processing systems in the States.

We provide, in some cases, 90 percent of the funding for the development of data processing systems in the States. Therefore we provide technical assistance and approve the expenditures of funds and monitor the expenditures of funds.

The major function, of course, that we have is to have stewardship over the financial expenditures in the program.

Senator **Metzenbaum**. I am sorry; I did not get that.

Mr. **Schutzman**. We have stewardship over the financial expenditures of the program. One-third of my staff are auditors. We are required by law to audit each State's program once a year.

Senator **Metzenbaum**. Do you provide subvention for each State?

Mr. **Schutzman**. I am sorry?

Senator **Metzenbaum**. Do you provide subvention for each State? Do you provide financial subsidy?

Mr. **Schutzman**. Yes.

Senator **Metzenbaum**. And is that where much of the $18 million goes?

Mr. **Schutzman**. No. I am sorry. The $18 million was just the salaries and expenditures. We supplied approximately $440 million to the States in fisical year 1982 to operate the child support enforcement program.

Senator **Metzenbaum**. Have U.S. attorneys and the FBI used the services in the past?

Mr. **Schutzman**. We have received 15 requests from U.S. attorneys; none from the Federal Bureau of Investigation. We believe they have their own sources of information.

Senator **Metzenbaum**. I have no further questions, and I assume that if the chairman or others on the committee have any further questions, you would be prepared to submit the answers in writing?

Mr. **Schutzman**. Yes, sir.

Senator **Metzenbaum**. Thank you very much.

Mr. **Schutzman**. Thank you, Mr. Chairman.

[The prepared statement of Mr. Schutzman follows:]

PREPARED STATEMENT OF FRED SCHUTZMAN

PARENTAL KIDNAPPING PREVENTION ACT

Mr. Chairman, Members of the Subcommittee on Juvenile Justice, I am Fred Schutzman, Deputy Director of the Office of Child Support Enforcement known as OCSE. I appreciate the opportunity to be here today to provide information on the role of the Office of Child Support Enforcement's Federal Parent Locator Service, the FPLS in parental kidnapping and child custody cases.

I would like to take a moment to discuss the Child Support Enforcement program and the principles upon which it is based. The program is a Federal/State effort to to establish paternity of children who have been deserted or abandoned and to ensure that absent parents provide support payments for their children. The main goals of the program are to insure that children are supported financially by their parents, to foster family responsibility, and to reduce the cost of welfare to the taxpayer. The program is succeeding.

Frequently in striving to obtain our goal of enforcing support, it is necessary to locate an absent parent. The FPLS was established to assist States in their efforts to track down absent parents who were ignoring their financial responsibility to support their children. P.L. 96-611, signed by the President on 12/28/80, expanded this role by authorizing use of the FPLS to locate children or individuals who have taken children in violation of a court custody order, or for the purpose of enforcing any State or Federal law related to the illegal taking or restraint of a child. States which want to use the FPLS for these purposes must enter into an agreement with the Secretary of of Health and Human Services.

In June, 1981 we sent States an information memorandum on the use of the FPLS in child custody and parental kidnapping cases, prescribing procedures for using the FPLS and an advance copy of the necessary agreement for use of the FPLS in connection with such cases. A final rule with comment period was published in the Federal Register on November 3, 1981. The regulations allow U.S. attorneys and FBI agents direct access to the FPLS for these cases where a State does not have an agreement with OCSE. Currently 18 States have agreements to use the FPLS in parental kidnapping and child custody cases. Three additional agreements are pending.

In fiscal year 1982 and to date in fiscal year 1983 there have been 67 requests for information from the FPLS related to parental kidnapping. Fifteen requests came from U. S. Attorneys and the remainder from 10 States with the aforementioned agreements. Address information from the FPLS was provided for 70 percent of the requests. As far as we have been able to ascertain, a total of 15 parents believed to have absconded with children have been located as a result of this service. State PLS offices are not routinely informed by the courts and law enforcement officers of the ultimate disposition of a child custody or parental kidnapping case, therefore I am unable to indicate the true effectiveness of these locations. The limitations of this process and the usefulness of the information obtained from the FPLS for parental kidnapping and child custody cases must be considered in the light of the sources of the FPLS information and the timing of the request to the FPLS.

The main sources of home and employer addresses available to the FPLS are the records of the Social Security Administration (SSA) and the Internal Revenue Service (IRS). Both these agencies have annual reporting requirements. Employers begin reporting earnings information to SSA in April and SSA completes the update of its files in the fall. The IRS records are updated completely by the September following the April personal income tax filing deadline of every year. A request to the FPLS for location of a recently kidnapped child or the individual believed to have taken the child is more likely to be useful when the information is updated.

It should be understood that if absconding parents are determined to avoid detection, the FPLS may be of little use. The FPLS is only as useful as the timeliness and accuracy of the information which is supplied.

Without reliable data on the number of incidents of parental kidnapping, it is difficult to evaluate the utility of the FPLS in these cases and the overall success of this piece of the program.

Senator **Metzenbaum**. Our next witnesses are a panel consisting of James G. Hergen, Assistant Legal Adviser for Consular Affairs, Office of Legal Adviser, U.S. Department of State; Mr. Edward Odom, Chief of the European Services Division, Office of Citizens Consular Services, U.S. Department of State; and Lucille Hernandez, Paralegal Specialist, Office of Citizenship Appeals and Legal Assistance, Passport Services, U.S. Department of State.

We are happy to have you with us.

STATEMENT OF JAMES G. HERGEN, ASSISTANT LEGAL ADVISER FOR CONSULAR AFFAIRS, OFFICE OF THE LEGAL ADVISER, U.S. DEPARTMENT OF STATE, ACCOMPANIED BY EDWARD ODOM, CHIEF, EUROPEAN SERVICES DIVISION, OFFICE OF CITIZENS CONSULAR SERVICES, U.S. DEPARTMENT OF STATE, AND LUCILLE C. HERNANDEZ, PARALEGAL SPECIALIST, OFFICE OF CITIZENSHIP APPEALS AND LEGAL ASSISTANCE, PASSPORT SERVICES, U.S. DEPARTMENT OF STATE

Mr. **Hergen**. Thank you, Senator. We are also pleased to have this opportunity to respond to the committee's invitation to furnish the State Department's views concerning the two facets of the hearings: First, what are the available methods for resolving international child abductions; and, second, how such abductions, in our view, might be prevented or reduced in the future.

I have submitted a detailed statement for the record, of course, and with your permission and in line with the comments of the chairman earlier, I will just briefly summarize my prepared testimony to give you some idea of what we do.

Before proceeding, I would like to introduce Ms. Lucille Hernandez, who is on my right. Ms. Hernandez is from the Department's Passport Services Office; and also Mr. Ed Odom of the Office of Overseas Citizens Services.

Senator **Metzenbaum**. We are happy to have all of you with us.

Mr. **Hergen**. Mr. Odom's office carries about 600 open cases involving international child custody disputes. Many of these cases, Senator, have generated congressional inquiries. Most of the cases involve situations where a child has been taken from the United States to a foreign country, rather than the other way around.

Under the existing international legal regime, there are very strict limits, practical and legal, upon how far the Department of State can go in assisting in this type of case. I think it is important for the subcommittee to understand that we can do several things which I personally believe to be very important and very helpful in these tragic cases.

First, we can assist parents to locate children abroad by making inquiries with relatives or at a last known address, or something like that, or by approaching the host country authorities for their assistance.

Second, we monitor and report on the welfare of the child or children. Again, I think everybody would agree that this is a very important service for a person who has lost a child and is concerned about its welfare. Examples occur every day.

Third, we provide lists of local attorneys in foreign countries so that people can get competent legal help. These lists are prepared for each consular district in the foreign country, and give a brief biographical sketch of the law firm and the lawyers—what their background is, their areas of practice, whether they are familiar with American law, their telephone numbers, and that kind of thing.

Fourth, we will furnish general information about foreign and domestic laws and procedures which the requesting parent may care to pursue. For example, if we know that a particular country takes a very harsh view of women's rights to custody, we can provide advice which will give the parent some help in weighing the relative advantages or disadvantages of pursuing legal action in that foreign country.

Fifth, we can alert the host country authorities where it appears that the child might be abused or neglected—as Mr. Lippe from the Justice Department said earlier; however, in most of these cases I think we all realize that the parent who abducts the child is generally not out to abuse the child; he or she is really interested in the child's welfare. They are usually very loving parents, and that is what makes these cases so difficult.

But if it does appear that there is abuse or neglect, we certainly can, and do, make efforts to contact the host country authorities.

Finally, we can impose, in certain cases, travel document restrictions, passport restrictions.

On the other hand, however, I must mention that there are several things the Department of State cannot do.

We cannot, for example, provide detailed legal advice. We cannot cause our consular officers or diplomats to go out and actually take physical custody of the child on behalf of the parent. We cannot force a child to return to the United States against its will, and we cannot initiate or attempt to influence child custody proceedings in a foreign court.

Obviously, these prohibitions stem not so much from U.S. domestic law, but from the fact that we are dealing with other sovereigns and are guests in those countries.

In this connection, I would like to take this opportunity to correct what I perceive to be a common misapprehension about the Department of State's role in denying passports.

Many parents from whom children are abducted incorrectly assume that it is possible to prevent a child from being removed from the U.S. by merely revoking the child's passport.

In most cases, however, revocation of the child's passport, while it may offer some limited help in certain cases, for a variety of reasons will not impede a resourceful and determined abductor from getting the child out of this country. The basic fact of the matter is that passport control, in my view, is not really the answer to the international child abduction problem. It is very simple for a parent to get a child out of this country without travel documents.

Turning now to my area of expertise—namely, how the United States and the State Department might help to prevent international child abductions in the future—I am pleased to report in this relatively sad area what I consider to be a happy development, a ray of hope, which is the Hague Convention on the Civil Aspects of International Child Abduction, in the negotiation of which the United States, I am proud to say, played a leading role.

I personally was fortunate enough to have been designated one of the U.S. delegates to the negotiating conferences. You will be pleased to know, Mr. Chairman, and Senator Metzenbaum, that to date seven countries, including the United States, have signed this convention, and one country, the Republic of France, has both signed and ratified the convention.

Senator Metzenbaum. When did the United States sign it?

Mr. Hergen. December 23, 1981, Senator.

Senator Metzenbaum. Do you know what the schedule is for us to ratify it?

Mr. Hergen. Right now as we are talking, the section-by-section analysis and the transmittal documents are in the course of preparation. I am happy to report that because the young lady who is preparing those documents, Ms. Pat Hoff, just had her first baby on Saturday, the writing has been temporarily delayed.

Senator Metzenbaum. A justifiable reason.

Mr. Hergen. There is a little problem with implementing legislation. The convention is a very good convention. It has been signed; obviously, the intent is to ratify it.

[Whereupon, Senator Specter resumed the Chair.]

Senator Specter. Which are the seven countries?

Mr. Hergen. The seven countries are the United States, Belgium, Canada, Greece, Portugal, Switzerland, and France. And I would like to say that in my experience, the Republic of France and Canada have been extraordinarily helpful in this area in dealing with the United States. They are very interested in this problem.

Senator Specter. Was an effort made to have more countries as party signatories, such as England and Mexico?

Mr. Hergen. Yes, sir. There are 29 countries in the Hague Conference. These are mostly the Western European countries, but there are others. It is a quite large number of countries and we anticipate that many will ultimately ratify this convention. And it takes quite a while for each country to work through its own internal processes, sign it and then ratify it.

Senator Specter. How big a problem is parental kidnaping on the international level?

Mr. Hergen. From everything that I have been able to observe, Mr. Chairman, it is a fairly significant problem, although no one, and I have spoken to most of the experts, can give any kind of a specific number. It is very difficult to come up with a specific number.

But the feeling at the Hague Conference was that even if there were only one child abduction internationally per year, it would have been worth the effort to develop a treaty like this.

Senator Specter. Although the statistics are hard to quantify, what is your best estimate as to the number of parental abductions across national boundaries each year?

Mr. Hergen. I would say in terms of the United States, the reported number of cases would probably come to somewhere in the area of 300. It is virtually impossible for me to give you an estimate of what the figure is worldwide. I would like to very much, but people much more knowledgeable than I have not been able to come up with those figures.

Senator **Specter**. On what basis do you make the guesstimate of 300 cases from the United States each year?

Mr. **Hergen**. Well, Mr. Odom's office in the Bureau of Consular Affairs, the Office of Overseas Citizens Services, is contacted with respect to these cases and it compiles files and corresponds with the person who lost the child; it corresponds with the foreign authorities. We do have statistical data on those cases, so we know that they are real cases.

Now, there are inquiries which do not result in files being kept. A lot of people call up and inquire, but we could not document those for the committee. There may be any number of telephone calls.

For example, Ms. Hernandez' office, the Passport Office, which may be a more accurate indicator, receives approximately 1,200 telephone inquiries each year about what we can do in the State Department to restrict travel documents for children.

Senator **Specter**. Ms. Hernandez, can you shed some light on that subject as to the number of parental abduction cases there are internationally each year?

Ms. **Hernandez**. Sir, I would say that there are between 300 and 500 children who are actually taken out of the country. Now, we have received over 1,000 cases in which the parents requested assistance for the denial of passport services.

Senator **Specter**. Requested what?

Ms. **Hernandez**. Requested the denial of passport services. But this is prior to the time the children are taken out of the country. We work from the United States and, of course, Mr. Odom's office gets the cases once the children have been taken out of the United States.

Senator **Specter**. What capability does the Department of State have to investigate cases of international parental kidnaping?

Mr. **Hergen**. To investigate?

Senator **Specter**. Yes.

Mr. **Hergen**. We have, of course, in every foreign country with which we have friendly relations, an embassy or a consulate. And we can, and will, at the request of a parent, instruct our consular officers to inquire, assuming there has been enough information provided, and, if need be, go out and search on the ground to try and find the child.

If we can make contact, we may go out and talk to the child in person, see how the child is, and maybe talk to local officials. And we can also go directly to local authorities and ask for their help or advice

Senator **Specter**. Now, Mr. Hergen, what will be the essence of the enabling legislation be that is currently under preparation to implement the treaty that you referred to?

Mr. **Hergen**. Well, Senator, the treaty is a very unusual treaty, and as a lawyer and a former prosecutor, you might be interested to know that it focuses principally on the return of the child. It does not really concern itself in great detail with the enforcement of custody rights and custody decrees.

To understand the implementing legislation, I would have to go into a little bit of detail about what the convention does.

Senator **Specter**. Please do.

Mr. **Hergen**. The heart of the convention involves a provision for the prompt return of an abducted child to its country of habitual residence, without a lot of legal proceedings involving a debate about who is entitled to custody, the theory being that the courts of the State from which the child has been abducted are competent to adjudicate the custody decision.

Senator **Specter**. How does this kind of procedure compare to international extradition?

Mr. **Hergen**. It is really not, in my view, analogous to international extradition. The principal thrust of the treaty is to send back the child, pronto, the thought being that we could thereby take away the incentive, if you will, from an abductor.

Senator **Specter**. So when you say send back the child, pronto, what legal proceedings would there be? I will give a hypothetical case. A child is found in Paris, France, and custody has been granted to a mother in Pittsburgh, Pa. What happens?

Mr. **Hergen**. OK. The fact that custody was granted to the mother in Pennsylvania would really be kind of irrelevant. What the authorities would look to would be where was that child residing, what was its place of habitual residence, and is there a person, an applicant—in this case the mother—who could claim that her right to custody has been violated.

Senator **Specter**. Well, is the French court going to make an independent determination of that?

Mr. **Hergen**. No, sir. That is the whole point of the convention.

Senator **Specter**. So, it really does turn on what the Pennsylvania court has adjudicated?

Mr. **Hergen**. No, sir, because under the convention a custody decree is not required. In other words, you could have a situation where, let us say, you and your spouse were living together, not divorced and not separated, and your spouse took your child and just went to a different country. There is no custody decree; there is no outstanding court order at all.

Your spouse winds up in Paris, France, and you say, "My God, I have a right in this child's custody."

Senator **Specter**. Well, how do you make that determination? Is there going to be a judicial proceeding in France to determine where the child lived and who is really entitled to custody?

Mr. **Hergen**. Well, it may be a judicial proceeding; it may be an administrative proceeding. In many European countries, child abduction matters are handled by administrative machinery rather than by judicial machinery.

In the case you describe, what would happen is, which leads to another feature of the convention which I consider really to be the main meat of this convention—this idea, this notion, of a central authority being established in each country.

In the case you described, or in the case that I described for you, the parent from whom the child was taken would communicate, either directly or through the United States central authority, with a central authority in France which had been designated by the French Government.

That central authority—in the case of the United States it would be the State Department, Mr. Odom's office——

Senator **Specter**. What kind of a proceeding, then, would there be, hypothetically, with the French authorities? Are they going to have to make a determination? Suppose there has been a judicial proceeding by the family court division, say, in Allegheny County, and they have made an award to a mother, and suppose it is a French father.

Will the French tribunal make an independent determination, and perhaps disagree with the U.S. court, because our whole concept of full faith and credit is that there should not be an inquiry, as you know, behind the judgment of the initial court?

If there is to be a challenge to that judgment, the contesting party has to go back to the jurisdiction and raise the issue so that you do not have a court decree in one jurisdiction which is challenged in another jurisdiction, and have conflicting court decrees.

The full faith and credit concept which applies in the United States as a matter of constitutional mandate accomplishes that purpose. But what is the application on that problem internationally?

Mr. **Hergen**. Well, as you know, the only way you can enforce a judgment in a foreign country without a treaty is by comity. The United States is not party to one single convention or treaty that I know of, which permits the enforcement of foreign country judgments in the United States.

Senator **Specter**. All right, but we have a treaty here. What does this treaty provide?

Mr. **Hergen**. Well, the interesting thing about this treaty is that it does not look to the formality of a custody decree, although a custody decree would certainly help. In other words, the framers of the treaty said what is the problem here? And the problem is the trauma that is inflicted on children who are dragged away or snatched away from their habitual residence. That is what we are looking at.

Senator **Specter**. So, they are really looking at habitual residence and an effort, once that is determined, to make a prompt return of the child there?

Mr. **Hergen**. That is correct. And in specific response to your question, when it finally gets to a court in France, the court in France, under the convention, is obligated by treaty to return that child, except in very limited exceptions.

Senator **Specter**. Such as?

Mr. **Hergen**. Such as, if the parent who is applying for the return of the child was not actually exercising custody rights. For example, let us say there is a mother in the United States who gives her child up for adoption and does not see the child for a year.

The child goes to France, then the mother says, "Gee, I want my child back; I've changed my mind." And she goes and applies to the French authorities and says——

Senator **Specter**. Well, that is not really an exception; that still turns on where the child resided or who had custody immediately prior to the change for the child.

Mr. **Hergen**. Well, under the convention, you see, the mother would not be a proper applicant because she was not actually effectively exercising custody.

Senator **Specter**. What other exceptions are there?

Mr. **Hergen**. Well, they are set forth in article 13 of the convention, and in article 21 there is a catchall exception which provides that a child need not be returned if to do so would violate the constitutional or human rights of the child.

There is another exception which is in article 13, which is very important, and that is that the child need not be returned if it can be demonstrated that to do so would subject the child to grave physical or mental harm, or intolerable conditions. You can see that the exceptions are very limited.

Now, I must say that I do not want to mislead the committee at all into thinking that this convention is a panacea. A lot will depend on how the courts in the various countries follow the spirit of the convention.

Senator **Specter**. I interrupted you when you started to describe the enabling legislation. We would like to know what that is going to consist of, essentially.

Mr. **Hergen**. The problem with the enabling legislation is that under the convention we are required to establish a central authority, and the central authority, under article 7 of the convention, is required to perform certain duties. They are required, for example, to locate abducted children.

There are two facets here. One is the location request, if you do not know where the child is, and the other one is to return the child.

Senator **Specter**. Can the FBI serve as that central authority?

Mr. **Hergen**. I am happy to report that that problem has been overcome. The State Department has volunteered to perform that function at this time, and I hope and expect that Mr. Odom's office will be the central authority for this country.

However, that having been said, I hasten to add that there are problems here because domestic relations and child custody matters are traditionally matters for the State courts. And even though we have an international convention which imposes certain obligations on our courts, it is not clear right now, when you have a federal system like the United States, which court will hear this return action, if it gets to the courts.

It is also unclear how much power, if you will, the central authority will have to——

Senator **Specter**. What is the legislation going to provide with respect to the court having jurisdiction on that?

Mr. **Hergen**. I am not competent to tell you exactly what it will provide. The thinking is that it would be better, in the run-of-the-mill, garden variety case, to let the State courts have as much room to run as they need, and that the Federal courts would be there as a backup for questions involving, for example, the constitutionality of the treaty.

But normal domestic relations cases should be in the State courts. How the legislation will ultimately evolve, I cannot say.

[The prepared statement of Mr. Hergen and additional material follow:]

PREPARED STATEMENT OF JAMES G. HERGEN

Mr. Chairman:

I am pleased to have this opportunity to communicate to the Subcommittee the State Department's views concerning (1) available methods for resolving international child abductions, and (2) how such abductions might be prevented in the future.

At the outset, I want to emphasize the Department's serious concern with the problem of international child abduction and our determination to do everything in our power to ameliorate the problem. In this connection, Mr. Chairman, I know from personal experience that hardly a day passes without the Department being requested to render assistance in at least one heart-rending international child abduction case. A large portion of the Department's involvement with international child abduction cases stems from Congressional inquiries.

The United States can take great pride in the professional and dedicated way in which the employees of the Department's Bureau of Consular Affairs handle such requests. I have with me today several of the outstanding Department employees who work routinely on these matters and who will be pleased to answer any questions which you might have concerning the Department's activities in this area.

Let me now provide an overview of the Department's activities in the area of international child abduction.

SOURCES OF INQUIRIES

Parents, grandparents, courts, private attorneys, interest groups, child welfare agencies, foreign officials, state authorities, the media and members of Congress continually approach the Department for information or assistance regarding international child abduction cases. Such inquiries are normally routed either to the Office of Citizens Consular Services ("CCS") or to the Passport Office, both of which are constituent elements of the Bureau of Consular Affairs. In addition, similar inquiries are addressed to American embassies and consulates abroad. Such inquiries can involve abductions either to or from the United States.

STATISTICAL DATA

It will be of interest to the Subcommittee to know that there are 677 open child custody cases in the Department, 333 of which came to the attention of the Department between April, 1982 and January, 1983. According to State Department records, 53 Senators and 129 Representatives have made inquiries concerning specific cases during the same period. These figures represent cases in which the Department became actively involved and opened a case file; in consequence, they do not reflect the much larger number of general inquiries which we receive concerning the subject and in which, for one reason or another, the Department does not become an active participant.

In order to breathe some life into the raw statistics and to assist the Subcommittee in better understanding the scope of the international aspects of child abduction, the Bureau of Consular Affairs has prepared an exhibit which not only displays the geographical distribution of the cases, but which also reflects Congressional interest and other basic information.

LIMITATIONS ON THE DEPARTMENT

By its very nature, the problem of child abduction is emotionally charged, and distraught parents in particular have difficulty in understanding the constraints under which the Department must operate in this area. Thus, experience teaches that when distressed parents contact the Department initially, many have little or no idea concerning available courses of action and incorrectly assume that the Department may itself act to have the child returned to the United States. In point of fact, however, the assistance which the Department can render to U.S. citizens--either directly or through its Foreign Service posts abroad--is limited to: (1) assisting parents to locate children abroad; (2) monitoring and reporting on the welfare of a child (the Department will provide information about a child under 18 to either parent, regardless of who has legal custody); (3) providing lists of foreign attorneys; (4) furnishing general information concerning foreign and domestic laws and procedures which might be of assistance in obtaining the return of the child; (5) if it appears that a child is being either abused or neglected, alerting the appropriate foreign law enforcement or social welfare authorities; and (6) imposing passport controls in appropriate cases.

The Department cannot: (1) provide legal advice; (2) cause its officers to take custody of a child; (3) force a child to be returned to the United States; or (4) initiate or attempt to influence child custody proceedings in foreign courts. Notwithstanding these limitations, however, it is manifest that the Department provides an invaluable public service with respect to international child abduction cases.

The limitations on State Department action derive not so much from domestic legal strictures as from the more general constraints inherent in the notion of national sovereignty. Thus, Americans frequently fail to understand that Department officers must operate in accordance with host country law. In addition, American court orders and custody decrees are not accorded automatic recognition abroad--any more than foreign court orders or decrees are automatically recognized in the United States. To the contrary, most foreign countries will exercise independent jurisdiction based upon the child's presence on their territory and will decide who is entitled to custody based upon their own domestic relations laws. This should not be taken to suggest, however, that foreign courts will disregard American custody decrees entirely, and the deference accorded to such American decrees by foreign courts on the basis of comity can vary widely depending upon the country involved and the facts of the case at issue. This situation is further complicated by the fact that the United States is not at present a party to any international agreement which would provide for the recognition and enforcement of American custody decrees. By way of analogy, therefore, the international legal order--at least insofar as the recognition of American custody decrees abroad is concerned--parallels somewhat internal United States practice prior to adoption by most of our States of the Uniform Child Custody Jurisdiction Act ("UCCJA"). This unhappy situation might be ameliorated substantially if the United States were to ratify The Hague Convention on the Civil Aspects of International Child Abduction, which I will presently discuss at greater length.

In a related vein, some states (e.g., California, under the leadership of Deputy Attorney General Gloria de Hart) have taken an active role in making informal arrangements with several foreign countries to improve cooperation in child custody and child support matters.

DEPARTMENT PASSPORT POLICY IN CHILD ABDUCTION CASES

The role of the Department's Office of Passport Services in child custody disputes is limited. This is due, in large measure, to the fact that although the Department often can assist a custodial parent by refusing to issue a passport to a child, it has no authority directly to prohibit or otherwise control the travel of American citizens. Also, the Department has no authority to adjudicate the issue of custody when confronted by a dispute or by conflicting court orders.

The Department recently amended its regulation governing the issuance of passports in cases involving child custody disputes more clearly to reflect the limited conditions under which we can use the passport authority to assist parents (22 C.F.R. 51.27(d)). Copies of the revised regulation and of the accompanying public notice (M-401) have been furnished to the Subcommittee Staff.

Within the limits described above, the Department has been able to forestall the abduction of some children from the United States in cases where we have been alerted, prior to issuance of a passport, that a child custody problem exists. Since our authority extends only to the issuance and denial of passports, we cannot assist parents where the child is taken to a country within the Western Hemisphere, since a passport is not required for such travel. The same is true in cases where a dual national child is documented with a passport issued by the country of its other nationality.

Once a passport is issued, and the child removed from the United States, a number of other factors arise that further limit our ability to frustrate child abductions. Thus, for example, the Passport Office frequently encounters cases where the courts of a foreign jurisdiction award custody of a child to the abducting parent, despite the fact that a court in the United States already has made a custody determination. In some instances, the abducting parent's acquisition of custody occurs by automatic operation of law in the foreign jurisdiction.

Because an United States citizen abroad is subject to the jurisdiction of the country in which he or she is located, we may have no alternative but to comply with the wishes of the abducting parent if the child is located in a country where that parent's custody is recognized. Although our embassies and consulates abroad cannot assist parents in removing a child from a foreign state, they can document the child in the absence of a written objection from the parent whose custodial rights are recognized in the country in which the passport services are sought.

Another pasport problem arises with respect to the return of abducted children to the United States. Thus, there is a widespread misconception within the United States that passport revocation is comparable to deportation or extradition and that revocation obliges the foreign state to compel the return of the individuals affected to this country, and to underwrite the costs involved. This is not true as it relates to passport revocations.

Passport Office statistics disclose that there has been a fifty-two percent (52%) increase in the number of child custody related cases opened over the past five years. In Fiscal Year 1979, for example, 729 new cases were opened, as compared to 476 cases in Fiscal Year 1974. As reflected in the statistical data which has been furnished the Subcommittee Staff, Passport Services' Office of Citizenship Appeals and Legal Assistance handled 1,181 such cases during FY 1982 and anticpates that such cases will continue to increase at the rate of 11.5% per year. As might be expected, the statistics indicate that the Passport Office experiences the greatest volume of cases during the periods coinciding with school vacations. Also, instructive is the fact that in May, 1981, the number of cases in which we were requested to take some action doubled from May, 1980.

Not evident from the raw statistics is the fact that once the Passport Office is requested to take action in a case, it frequently receives subsequent requests on the basis of changes in circumstances, or because of modification to a previous judicial decision. Also not apparent from the statistics is the number of telephonic inquiries we receive each year following which a parent ultimately decides not to request formal action on our part.

Because the public, until recently, was not aware of the services which the Passport Office can provide, we saw a very small percentage of the total number of cases in which child abductions have occurred. As a result of our efforts to make known the services we offer, we anticipate a sharp increase in the number of child abduction and child custody cases in which our assistance is sought.

In 1981 Ambassador Diego C. Asencio, the Assistant Secretary for Consular Affairs, wrote to the Attorney General of each State, describing our policies and procedures; requesting information on each State's child custody laws, regulations and procedures; and, seeking suggestions on how we could be of more assistance to the states in such cases. A similar letter was sent to the Family Law Section of each State Bar Association. Unfortunately, however, the results have been disappointing. With but few notable exceptions (California and Florida) state agencies displayed little interest in utilizing passport services as a means of deterring child abduction.

THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

In 1979--during my prior incarnation as a Trial Attorney in the Justice Department's Civil Division--I served as an United States delegate to a "Special Commission on Legal Kidnapping", which was convoked under the auspices of The Hague Conference on Private International Law */ at The Hague, Netherlands.

The Special Commission was created for the purpose of attempting to ameliorate, on an international scale, many of the same problems which have been before this Subcommittee

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*/ The Hague Conference is an association of 29 nations (Argentina, Australia, Austria, Belgium, Canada, Czechoslovakia, Denmark, Egypt, Finland, France, Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan, Luxembourg, The Netherlands, Norway, Portugal, Spain, Suriname, Sweden, Switzerland, Turkey, United Kingdom, United States, Venezuela and Yugoslavia), the purpose of which is to further unification of the rules of private international law. Although the history of the Conference is long and venerable--dating to 1893--the United States did not become a member until enactment of Pub. L. 88-244 (December 30, 1963; 77 Stat. 775). Traditionally, member nations are represented at the Conference by their most prominent experts on conflicts of law, law professors and law deans, members of their highest courts, legal advisers and other ranking law officers. To date, the United States has become a party to only 3 of the 29 conventions adopted at formal sessions of The Hague Conference since 1951.

as a matter of purely domestic concern. I am pleased to report to the Subcommittee that after two years of intense effort, the Conference, at its 14th formal session in October, 1980, adopted the Special Commission's proposed "Convention on the Civil Aspects of International Child Abduction." The United States signed the Convention on December 23, 1981. Other countries that have signed are Belgium, Canada, Greece, Portugal and Switzerland. France has both signed and ratified the Convention.

The State Department's Assistant Legal Adviser for Private International Law is now in the proess of preparing the treaty for transmittal to the Senate for advice and consent to United States ratification. Transmittal of the Convention to the Senate has buen delayed pending completion of accompanying implementing legislation which is currently being drafted. As will be made clear from my following remarks, the Department is satisfied that the Convention--if adopted by a reasonably large number of states--will represent a significant advance in international cooperation while at the same time doing much to ameliorate many of the problems which I have already mentioned.

OBJECTIVES OF THE CONVENTION

The overriding purpose of this Convention is to discourage abduction of children in custody-related disputes, based on the view that these abductions are harmful to children and that custody disputes should be settled either voluntarily or by the courts of the country where the child habitually resides. This underlying policy is also incorporated in the U.S. Uniform Child Custody Jurisdiction Act, which has been adopted by 48 states and the District of Columbia. The Convention is intended to discourage child abduction by restoring the situation which existed before the abduction, thus removing the benefits which the abductor might otherwise gain from removal of a child to a foreign country or wrongful retention of a child abroad. It seeks to do this by establishing two basic mechanisms: (1) an expedited and simplified legal proceeding for the prompt return of an abducted child, and (2) a system of governmental "Central Authorities" in each country to assist with and expedite the process of locating and returning abducted children.

The Convention also provides a framework for protecting visitation rights (called "access rights"), recognizing that child abduction may be caused or aggravated by problems concerning exercise of vistation rights.

As the title of the Convention indicates, the Convention deals exclusively with the civil aspects of child abduction. It does not cover child abduction under the criminal law or extradition from and to foreign countries.

DEPARTMENT OF STATE POSITION WITH RESPECT TO THE CONVENTION

The Department's favorable view of the Convention is perhaps best summarized in the Legal Adviser's recommendation to the Acting Secretary of State that the United States sign the Convention--

> *International child abductions are a growing and intractable problem for the children,* aggrieved parents, foreign ministries, consular officials, courts and attorneys involved. The ...*Convention represents the best foreseeable opportunity for the United States* to participate in international legal and administrative arrangements *to deal with international child abductions*. It would reduce the Department's burden in dealing with aggrieved parents seeking the return of children abducted from the United States. /_Emphasis in original._7

Although the Convention would not be a panacea, it should certainly represent a quantum improvement over the existing international state of affairs and would, in perhaps most cases, substantially further the welfare of children. At the same time, it would reduce the inequities, hardships and expenses which are often involved in international child custody disputes by ensuring the prompt return of children to their place of habitual residence for a legal determination there of the underlying custody issue. Thus, at least in the Department's view--and in the view of most individuals and groups which have given the Convention serious thought--the principal benefits of the Convention will be (1) to reduce international child abductions by its deterrent effect, and (2) to promote more rational and orderly resolutions of international child custody disputes. If our expectations prove justified, we will have succeeded in making the world a better place for children who are unfortunate enough to become the objects of custody disputes.

PRINCIPAL FEATURES OF THE CONVENTION

Before describing how the Convention would operate, I want to emphasize that it is strictly civil in nature; it is totally divorced from normal criminal processes and sanctions. Nevertheless, it is clear that to the extent the Convention succeeds in reducing the number of international child abductions, it would effect a concomitant reduction in the need for application of criminal processes.

The Convention is impressive for its clarity and simplicity. It is comprised of 45 Articles which, in turn, are arranged under 6 Chapters, i.e., Scope of the Convention; Central Authorities; Return of Children; Rights of Access; General Provisions; and, Final Clauses. While it would be inappropriate for present purposes to engage in an article-by-article analysis, I would like to explain the general scheme of the Convention and to highlight some of its more prominent features which may be of interest to the Subcommittee.

First, Art. 12 imposes upon the judicial or administrative authorities of the requested state an obligation to return abducted children if they have been taken from one contracting state to another. This obligation to return is subject only to the express exceptions which are discussed at greater length below.

Second, countries that ratify the Convention will be obligated to take "all appropriate measures" to implement the Convention's stated objectives, and to this end "they shall use the most expeditious procedures available." (Art. 2) In other words, while contracting states are afforded some degree of latitude with respect to how they implement the procedures provided by the Convention, speed is of essence. This, everyone agrees, is highly significant, since it will help to prevent changes in the status quo through passage of time.

Third, the Convention applies to "any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights," and who is younger than 16 years. (Art 4)

Fourth, at the heart of the Convention lies the requirement that each contracting state establish one or more official "Central Authorities" which would serve as clearing houses for incoming and outgoing applications and which would be well equipped to provide organized, authoritative information and assistance. (Arts. 6-7) In particular, it would be the responsibility of the Central Authorities to "take all appropriate measures" (as permitted by their domestic law), "either directly or through any intermediary", to: (1) locate abducted children; (2) prevent harm to the child or prejudice to interested parties through provisional measures; (3) secure the voluntary return of the child or otherwise resolve the custody dispute in an amicable way; (4) exchange information regarding the child's social background; (5) provide general information about their laws as they might pertain to a custody dispute; (6) "initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access"; (7) provide or facilitate the provision of legal aid or advice; (8) make administrative arrangements for the safe return of abducted children; and, (9) keep each other informed about how the Convention is operating and eliminate obstacles to its operation.

The Department of State has recently offered to act as the United States Central Authority on a trial basis basis, thereby putting to rest one of the more practical impediments to prompt ratification. The Office of Citizens Consular Services will execute these functions within the Department.

Fifth, the requirements of the application process and the judicial enforcement mechanism are spelled out in Chapter III. Thus, Art 11 requires that the judicial and administrative authorities of the requested state act "expeditiously." Under Art. 12, a court must order a child returned to its country of habitual residence "forthwith" (subject to the exceptions of Arts. 13 and 20) if less than one year has elapsed from the date of the abduction to the initiation of court proceedings; if more than one year has elapsed, the requested court may decline to order the child's return if "it is demonstrated that the child is now settled in its new environment."

Arts. 13 and 20 set forth the only permissible exceptions to the obligation to return a child. If circumstances of a case are found to satisfy the requirement of any one exception, a court in the requested state may refuse to order a child's return. Under these provisions, return may be refused where: (1) the applicant is determined to have been "not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention" (Art 13(a)); (2) there is a "grave risk that return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation" (Id., 13(b)); or (3) where return "would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms" (Art 20). Under Art. 13 the preference of a mature minor under age 16 not to be returned may justify refusal of the court to order its return.

Other important provisions of Chapter III are Art. 16, which limits the ability of the courts of the requested state to decide the merits of the underlying custody dispute, and Art. 18, which empowers the courts of the requested state to order the child's return under other available return mechanisms,e.g., the UCCJA or the Federal Parental Kidnapping Prevention Act of 1980. Art. 21 deals with the protection of visitation rights.

Finally, the balance of the Convention comprises other administrative and technical points, such as the requirement for bond, legalization of documents, translations, legal aid, responsibility for costs and expenses, and recoupment of costs from the abductor. Article 29 permits direct access by an aggrieved person to the judicial or administrative authorities of the requested state, "whether or not under the provisions of this Convention."

Obviously, I could go into much greater detail concerning the various provisions of the Convention. I trust, however, that I have provided sufficient background so that the Subcommittee can understand the broad outlines of the Convention and appreciate why the Department believes its ratification will ameliorate many, if not all, of the problems relating to international child abduction, at least among countries which have become parties to the Convention.

Before inviting the Subcommittee's questions on the points which I have covered, I should note two final points which I consider to be of special importance. First, it bears particular emphasis that the Convention is a two-way street. This means, of course, that if the United States ratifies the Convention, we will be under a complimentary obligation to return to foreign countries children who are abducted to the United States. In this connection, however, you should be aware that our courts already do this quite extensively under the international return provision of the UCCJA. In consequence, the Department believes that on balance the United States stands only to gain under the Convention. Second, in the four years during which I have been involved with the Convention, the Department detected no opposition in this country. To the contrary, the American Bar Association, state and federal authorities, the academic community and parents groups, among others, have shown strong support for the Convention.

In conclusion, I would like to say that it has been a pleasure to have been accorded an opportunity to express the Department's views on this important topic to the Subcommittee and I thank you for your attention and courtesy. I will be pleased to answer any questions you might have.

DEPARTMENT OF STATE
Washington, D.C. 20520

ASSISTANCE IN CHILD CUSTODY DISPUTES

The Department of State receives many requests for advice and assistance from parents whose children have been taken from the United States or prevented from returning to the United States by the other parent. The Department and American Embassies and Consulates will do whatever they can to assist parents who are involved in child custody disputes; however, in most cases, the amount and type of assistance which the Department and its Foreign Service posts can offer is quite restricted. While the Department attempts to be of assistance in these matters, it cannot assume responsibility for any failure or inability to comply with the wishes of parents or guardians.

Consular Assistance

In child custody controversies in which children have been taken to another country or have been kept abroad by one parent, the Department of State, through its Foreign Service posts, can attempt to locate the children, monitor their welfare upon the request of a parent, make available general information about child custody laws and procedures, and furnish a list of attorneys in the foreign country should the parents indicate the need for legal advice or assistance. The Department can provide information about the welfare of a child under the age of eighteen to either parent, regardless of custody. If it appears that a child is being abused or neglected, Department officers can alert the local authorities or social service agencies.

Requests for Assistance

Persons who desire the Department's assistance in ascertaining the welfare or whereabouts of a child should send the following information to the Office of Citizens Consular Services (CA/OCS/CCS), Department of State, Washington, D.C. 20520, or to the U.S. Embassy or Consulate nearest the child's foreign residence: the full name of the child; the child's date and place of birth; passport data, if known; any available information about the child's departure from the United States or destination; and the names and, if possible, the addresses and telephone numbers of persons with whom the child travelled or is believed to be staying. Information concerning the provisions which have been made for custody of the child or a copy of any pertinent court decree is helpful. Parents should include telephone numbers where they can be reached if the Department or a Foreign Service post needs further details. The Office of Citizens Consular Services can be reached by telephone at (202) 632-3444.

Jurisdictional Limitations and Legal Assistance

If an amicable settlement of a child custody dispute cannot be worked out by the parents, the only recourse may be a court action in the country where the child is located. The law of the country in which the child is physically present, even temporarily, is controlling.

Traditionally, the legal doctrine to which most countries have adhered is that the presence of a child within a particular country renders its courts competent to determine who should have custody of the child, regardless of any prior custody judgment issued by a court in another country. As a result, it is not unusual to find conflicting custody decisions in different jurisdictions. Courts in some countries have honored American custody decrees, but on the whole the outcome is unpredictable. The United States Government cannot force a foreign country to honor any American court order regulating custody or visitation rights.

Although U.S. consular officers can provide lists of attorneys in their consular districts, they cannot recommend any particular attorney, offer legal advice, represent U.S. citizens in custody or other hearings before foreign courts, or attempt to influence the outcome of those hearings.

Consular officers have no legal authority to obtain physical custody of children and return them to the United States. They cannot assist a parent in acquiring physical custody of a child illegally or by force or deception. Officers cannot help a parent to leave a foreign country with a child whose custody is disputed if the departure would violate a court order or the laws of the foreign country. They can, however, provide a passport for a U.S. citizen child whose custody is disputed if the child appears in person and they have not received a court order issued by the foreign government barring the child's departure from the country or awarding custody to someone other than the parent accompanying the child.

Passport Denial

When there is controversy concerning the custody of a minor, a passport-issuing office in the United States or abroad may deny issuance of a passport to the minor if it receives a court order from a court within the country in which passport services are sought. The court order must give custody of the child to the person who has requested that passport services be denied or must specifically forbid the child's departure from the country without the court's permission. Even in cases where a passport cannot be denied, parents can be notified if passport applications are submitted in the names of their children. Generally, after a passport has been issued, it cannot be revoked merely because the bearer has become involved in a child custody dispute.

Persons interested in passport denial may write to the Office of Citizenship Appeals and Legal Assistance (PPT/C), Department of State, Washington, D.C. 20520.

M-401
11-80

Passport Services

BUREAU OF CONSULAR AFFAIRS
U.S. DEPARTMENT OF STATE
WASHINGTON, D.C. 20524

ISSUANCE AND DENIAL OF PASSPORTS
TO MINOR CHILDREN

Passport Services frequently is asked by parents or guardians not to issue passports to minor children, or to revoke passports previously issued to such children. This Notice provides basic information on the policies and procedures applicable to such cases.

RESPONSIBILITY OF THE DEPARTMENT OF STATE

Every effort is made to assist parents. However, the Department cannot assume any legal responsibility if it is unable to carry out the wishes of parents or guardians in the issuance or denial of a passport to a minor. The laws governing parental rights vary from state to state and from country to country, and parents or guardians ultimately must look to the courts of those countries to enforce their rights.

DEFINITION OF A MINOR

Passport regulations define a minor as an unmarried person under 18 years of age. For that reason, parental objections do not provide a basis for denying a passport to a person 18 years or over.

PASSPORT APPLICATION PROCEDURES

Place of Application. Applications must be made in the country within which the minor is located at the time of application.

Who Must Execute the Application. A parent or legal guardian must apply on behalf of a minor under the age of 13 years. Any other person making application on behalf of a minor must present written authorization from the parent or guardian. The minor may be required to appear before the official accepting the application if necessary to establish the minor's identity or confirm the minor's presence in the country where the application is made.

Minors 13 years of age or over should execute their own applications unless the accepting official determines that the circumstances warrant execution of the application by a parent or guardian. Such minors may be required to submit the written consent of a parent or guardian before a passport is issued.

PROCEDURES FOR REQUESTING DENIAL OF A PASSPORT TO A MINOR

Form and Content of Denial Requests. Requests must be made in writing. At a minimum, the request must provide the complete name, date, and place of birth of the minor, and the minor's relationship to the person requesting that a passport not be issued.

Where to Send Passport Denial Requests. Requests should be addressed to the Office of Citizenship Appeals and Legal Assistance (PPT/C), Department of State, Washington, D.C. 20520, directly or through the nearest Passport Agency in the United States. If the minor is abroad, the request should be sent to the nearest American Embassy or consulate.

Action Taken Upon Receipt of Denial Requests. Upon receipt, a notice is entered in the name of the minor child so that the objecting parent or guardian can be notified if an application is received in the minor's name. The objecting parent will receive confirmation of this in writing. If a search of the files reveals that the minor already has been issued a passport, a parent or guardian will be informed and advised concerning any assistance which can be provided in such cases.

DURATION AND GEOGRAPHIC APPLICABILITY OF DENIAL NOTICES

Duration of Notice. Notices recording objections to the issuance of passports to minors remain in effect until the minors become 18 years of age, unless withdrawn by the objecting parent or guardian before that date.

Applicability of Notice. Notices entered in the United States are applicable only within the limits of the United States. If a notice requests the denial of a passport to a child residing abroad, the notice will be applicable only within the country in which the child is located.

DENIAL OF PASSPORTS WHEN CUSTODY OF MINOR IS IN DISPUTE

Presumption as to Parental Consent. Absent prior notification to the contrary, an application executed by or with the consent of one parent is presumed to have the consent of the other parent. Unless there has been a judicial award of custody to the objecting parent or a restraining order prohibiting the child's departure from the particular jurisdiction , the parent's objection will not prevent issuance of a passport which was applied for with the consent of the other parent. Nevertheless, a notice can still be entered so that the objecting parent can be notified if a passport application is executed.

Denial Requests Where One Parent Has Been Awarded Custody. A request that a minor not be issued a passport without the consent of the custodial parent or legal guardian must be accompanied by a copy of the court order awarding custody of the minor to that parent or guardian. Passport Services will also deny a passport to a minor at the written request of a non-custodial parent if that parent submits a copy of a court order which prohibits the minor's departure from the particular jurisdiction. The court order must have been issued or recognized by a court in the country in which the minor is residing.

Conflicting Court Orders as to Custody of a Minor. In such cases, Passport Services will not attempt to resolve the conflict between court orders. The parent objecting to the issuance of the passport may be given a limited time in which to resolve the conflict through the courts or by agreement of the parties, otherwise, the passport application of the minor will be approved.

Enforcement of Visitation Rights. Except as noted, whether or not a passport will be issued to a minor is determined by whether or not the objecting parent has been awarded legal custody of the minor. Unless specifically provided for in a court order, visitation rights awarded to a non-custodial parent will not be enforced by either the issuance or denial of a passport to a minor.

Denial Requests in Country Other Than One in Which Custody Was Awarded. It is the Department's policy that no extraterritorial validity will be given to a court order involving custody of a minor. For that reason, it is not possible to deny a passport to a minor who is outside the country whose courts awarded custody of the minor to the objecting parent.

REVOCATION OF PASSPORTS ISSUED TO MINORS

Parental objections, or court orders or decrees concerning custody do not provide a basis under passport regulations for the revocation of passports. However, the regulations do not prevent the objecting parent or guardian from attempting to recover possession of a minor's passport, either directly or through order of a court.

PASSPORT REVOCATION TO ENFORCE NON-CUSTODY PROVISIONS OF COURT ORDERS

Warrants of arrest, injunctions, or contempt of court citations issued for the failure of a parent or guardian to abide by the provisions of custody orders are enforceable by revocation of a passport only to the extent that they would be enforced against the violators by federal felony action in the Courts of the United States.

OTHER SERVICES - WELFARE/WHEREABOUTS OF MINORS OUTSIDE THE UNITED STATES

Frequently, a parent or legal guardian will ask the assistance of the Department in determining the whereabouts or welfare of a minor child who is outside of the United States. Such requests should be made in writing and addressed to the Office of Citizens Consular Services, Overseas Citizens Services, Department of State, Washington, D.C. 20520. All requests should include the telephone number of the writer in case he or she must be contacted for further information. Upon receipt of such a request, an effort will be made to establish the minor's location or welfare and to provide information that may help the concerned parent.

The Office of Citizens Consular Services has available on request a Notice entitled "Assistance in Child Custody Disputes" which contains more information about welfare/whereabouts services offered by that office.

§ 51.27 Minors.

(a) *Definitions.* A minor is an unmarried person under the age of 18 years.

(b) *Execution of application by minors.* A minor of age 13 years or above shall execute an application on his own behalf unless in the judgment of the person before whom the application is executed it is not desirable for the minor to execute his own application. In such case it must be executed by a parent or guardian of the minor, or by a person in loco parentis. A parent, guardian or person in loco parentis shall execute the application for minors under the age of 13 years. The passport issuing office may require a minor under the age of 18 years to obtain and submit the written consent of a parent, a legal guardian or a person in loco parentis to the issuance of the passport.

(c) *Objection by parent or guardian in cases not involving the custody of the minor.* At any time prior to the issuance of a passport to a minor and upon receipt of a written objection from a person having legal control of the minor, the passport issuing office may disapprove the minor's application.

(d) *Objection by parent or guardian in cases involving the custody of a minor.* When there is controversy concerning the custody of a minor, the passport issuing office may deny issuance of a passport to the minor if it receives a court order from a court within the country in which passport services are sought. The court order must give custody of the minor to the objecting parent, legal guardian or person in loco parentis or must forbid the child's departure from the country in which passport services are sought without the permission of the court.

[Dept. Reg. 108.541, 31 FR 13540, Oct. 20, 1966, as amended by Dept. Reg. 108.751, 43 FR 1791, Jan. 12, 1978; Dept. Reg. 108.779, 44 FR 41777, July 18, 1979]

PPT/C STATISTICAL EXPERIENCE FY 1979 - 1982 AND PROJECTIONS THROUGH FY 1985

FISCAL YEAR	1979	1980	1981	1982	1983	1984	1985
			CHILD CUSTODY				
TOTAL CASES	911	577	1,060	1,181	-	-	-
TOTAL MANHOURS	3,868	3,535	4,305.5	4,773.3	-	-	-
AVERAGE MANHOURS PER CASE	4.2	6.5	4.6	4.4	-	-	-
TOTAL CASES PROJECTED[1] FOR FY 1983 - 1985	-	-	-	-	1,317	1,468	1,636
TOTAL MANHOURS PROJECTED[2] FOR FY 1983 - 1985	-	-	-	-	5,795	6,459	7,198

[1] Based on projected 11.5% annual rate of increase in caseloads

[2] Based on projected average of 4.4 manhours per case

CCS STATISTICS BY COUNTRY AS OF 1/10/83

(Children taken from U.S. to Countries which have expressed interest in the Hague Convention of the Civil Aspects of Child Abduction)

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Argentina	2 current	----
	1 suspense	----
	1 closed	
Australia	1 current	----
	8 suspense	----
	5 closed	----
Austria	1 current	----
Belgium	4 suspense	----
	4 closed	----
Brazil	7 current	----
	2 suspense	----
	4 closed	----
Canada	12 current	----
	6 suspense	----
	6 closed	----
Czechoslovakia	1 current	----
	1 closed	----
Denmark	3 current	----
	2 suspense	----
	3 closed	----
Egypt	3 current	----
	3 suspense	----
Finland	1 closed	----
France	7 current	----
	2 suspense	----
	6 closed	----
Federal Republic of Germany	30 current	----
	33 suspense	----
	25 closed	----
Greece	9 current	----
	11 suspense	----
	6 closed	----
Hungary	1 current	----
	1 closed	----
Israel	1 closed	----
	1 suspense	----
Italy	8 current	----
	7 suspense	----
	10 closed	----

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Japan	4 suspense	----
	1 closed	----
	1 suspense	----
Morocco	1 suspense	----
The Netherlands	6 current	----
	7 suspense	----
	7 closed	----
Norway	1 current	----
	1 suspense	----
	1 closed	----
Portugal	1 suspense	----
	2 closed	----
Spain	2 current	----
	3 suspense	----
	6 closed	----
Suriname	2 suspense	----
Sweden	2 current	----
	3 suspense	----
	3 closed	----
Switzerland	4 suspense	----
	5 closed	----
Turkey	4 current	----
	1 suspense	----
	1 closed	----
United Kingdom	23 current	----
	14 suspense	----
	6 closed	----
Uruguay	1 current	----
	1 suspense	----
Venezuela	1 current	----
	1 suspense	----
Yugoslavia	5 current	----
	3 suspense	----
	6 closed	----

	CURRENT	SUSPENSE	CLOSED
SUBTOTAL:	129	126	109
TOTAL:	364		

Geographic Breakdown of Increase in Caseload March 1982 - January 1983

	March 1982	January 1983	Increase
AF	28	41	13
NEA	40	67	27
ARA	50	174	124
EA	9	58	49
EUR	217	337	120

CCS STATISTICS BY COUNTRY AS OF 1/10/83

(Children taken to U.S. from Countries which have expressed Interest in the Hague Convention on the Civil Aspects of Child Abduction)

France	2
Venezuela	2
Chile	1
Argentina	1
Uruguay	1
Egypt	1

TOTAL: 8

CCS/EUR CHILD CUSTODY STATISTICS BY COUNTRY AS OF 1/10/83

(Children taken from U.S. to EUR countries)

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Austria	1 current	----
Bulgaria	----	----
Belgium	4 suspense 4 closed	Nunn-Georgia Burton-Cali. Heinz-Penn. Martin-Ill.
Canada	12 current 6 suspense 6 closed	Thomas-Cali. Brown-Colorado ----
Cyprus	1 current	----
Czechoslovakia	1 current 1 closed	---- ----
Denmark	3 current 2 suspense 3 closed	Steers-Maryland Mathias-Maryland Danielson-Maryland Jepson-Iowa
Germany	30 current 33 suspense 25 closed	Sensenbrenner-Wis. Roth-Wisconsin Marina-Montana Long-California Sharp-Indiana Ryan-California Rousselot-Cal. Forsythe-New Jersey Stone-Florida Gore-Tennesse Young-Florida Specter-Penn. Williams-Montana Schmitt-New Mexico Aspen-Wisconsin Kennedy-Mass. Javits-New York Mitchell-New York Hayakawa-Cal. Percy-Ill. Stevenson-Ill. Metzenbaum-Ohio
Finland	1 closed	----
France	7current 2 suspense 6 closed	Medzi-Michigan Levin-Michigan ----
East Germany	----	----

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Greece	9 current 11 suspense 6 closed	Williams-Ohio Cranstson-Calif. Flippo-Alabama Rhodes-Arizona Eagleton-Missouri Coleman-Missouri Russo-Ill. Chiles-Florida
Hungary	1 current 1 closed	---- ----
Iceland	1 closed	----
Ireland	2 current 4 suspense 1 closed	Tsongas-Mass. ---- ----
Italy	8 current 7 suspense 10 closed	Bennett-Florida Clinger-Penn. Kennedy-Mass. Molinari-New York Gilman-New York Pell-Rhode Island Tsongas-Mass.
Luxembourg	----	----
Malta	1 closed	----
Netherlands	6 current 7 suspense 7 closed	Johnson-Louisiana Sarbarnes-Maryland Bentsen-Texas D'Amato-New York
Norway	1 current 1 suspense 1 closed	Church-Idaho Javits-New York Corman-California
Poland	3 suspense 3 closed	Cleghorn-Rhode I. Moynihan-New York
Portugal	1 suspense 2 closed	---- ----
Rumania	----	----
Russia	----	----
Sweden	2 current 3 suspense 3 closed	Parris-Virginia Cranston-California Hayakawa-California
Switzerland	4 suspense 5 closed	Shelby-Alabama Church-Indiana
Spain	2 current 3 suspense 6 closed	Ritter-Penn. Bayh-Indiana O'Neil-Mass.

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Turkey	4 current 1 suspense 1 closed	---- ---- ----
United Kingdom	23 current 14 suspense 6 closed	Wright-Texas Guyer-Ohio Tower-Texas Cranston-Cali. Wylie-Ohio Long-Louisiana Burton-Cali. Laxalt-Nevada Talmadge-Georgia Danforth-Miss. Synar-Oklahoma
Yugoslavia	5 current 3 suspense 6 closed	Russo-Illinois ---- ----

	CURRENT	SUSPENSE	CLOSED
SUB TOTAL:	118	109	110
TOTAL:337			

CCS/ARA CHILD CUSTODY STATISTICS BY COUNTRY AS OF 1/10/83

(Children taken from U.S. to ARA countries)

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Venezuela	1 current 1 suspense	Sen. Paula Hawkins Rep. Bill Young
El Salvador	2 current 2 suspense	White House Rep. Paul Simon
Barbados	1 suspense	Sen. Alan Cranston
Guatemala	3 closed 3 current	Sen. Alan Cranston ---
Ecuador	5 current 3 suspense 2 closed	Rep. Leon Panetta Rep. Charles E.Bennett Rep. John Brademas
Brazil	7 current 2 suspense 4 closed ---- 	Sen. Wendell Ford Rep. Toby Moffat Rep. Arlan Stangeland Rep. Benjamin Gilanny Sen. Russell Long
Haiti	2 current 5 closed ---- ----	Sen. Donald Riegle Rep. William Lehman Rep. James Oberster Sen. Richard Schweiker

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Panama	1 closed	Sen. Thomas Eagleton
	----	Rep. Claude Pepper
Chile	1 current	Sen. John Glenn
	2 suspense	----
	2 closed	----
Guyana	2 current	----
Peru	3 current	Rep. Bill Clinger
	1 closed	Rep. John Burton
Mexico	21 current	Rep. De la Garza
	18 suspense	Sen. Charles Percy
	4 closed	Sen. Paul Laxalt
	----	Sen. Daniel Moynihan
	----	Rep. Gus Yatron
	----	Sen. Bill Bradley
	----	VP Mondale
	----	Sen. Henry Jackson
	----	Rep. Phillip Burton
	----	Sen. Cranston-
		Rep. Collins
	----	Rep. Leon Panetta
	----	Sen. William Proxmire
	----	Rep. Eldon Rudd
	----	Rep. MaryRose Oakar
	----	Sen. S.I. Hayakawa
	----	Rep. Jim Lloyd
	----	Sen. John Melcher
	----	Rep. Jack Brinkley
	----	Rep. John Porter
	----	Rep. Clarence Brown
	----	Rep. John Porter
Colombia	7 current	Sen. Bill Bradley
	6 suspense	Rep. Dick Cheney
	1 closed	Sen. Daniel Moynihan
	----	Rep. John Brademas
Belize	2 suspense	Rep. Edgar Jenkins
	2 closed	Rep. Jack Brooks
	----	Sen. Mark Hatfield
Bahamas	1 suspense	----
	1 closed	----
Argentina	2 current	Sen. Daniel Moynihan
	1 suspense	----
	1 closed	----
Jamaica	1 current	----
	2 suspense	Rep. David Evans
	2 closed	----

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Costa Rica	2 current	Sen. Robert Kasten
	4 suspense	White House
	3 closed	Sen. Donald Riegler
Bolivia	4 current	Rep. Hamilton Fish
	1 suspense	Sen. Walter Huddleston
		Sen. Paul Hawkins
	1 closed	----
Uruguay	1 current	Sen. Orrin Hatch
	1 suspense	----
Trinidad	3 current	----
	1 closed	----
Paraguay	1 current	----
	1 suspense	----
	1 closed	----
Honduras	1 current	Rep. Jack Kemp
	1 suspense	Sen. Alan Cranston
	1 closed	----
Dominican Republic	2 current	Rep. Ted Weiss
	2 suspense	VP Mondale
	2 closed	----
Suriname	2 suspense	----

	CURRENT	SUSPENSE	CLOSED
SUB TOTAL:	77	55	42
TOTAL:	174		

CCS/ARA CHILD CUSTODY STATISTICS BY COUNTRY AS OF 1/10/83

(Children taken to U.S. from ARA countries)

Venezuela - 2 cases

The Venezuelan Government has made two requests for the return of Venezuelan children abducted to the U.S. by a Venezuelan parent. In the first case we have not as yet been able to locate the child through the good offices of the Michigan Parent Locator Service. In the second case the Venezuelan Government requested service of process upon the abducting parent of notice as to the freezing of his assets in Venezuela until such time as the child is returned to the jurisdiction of the Venezuelan court. Service was effected and the Venezuelan Embassy was provided with information as to how to enforce a judgment in the U.S.

Chile - 1 case

The Chilean Government has requested enforcement of a Chilean judgment in connection with the abduction of a Chilean child to the U.S. by a Chilean parent. Information was provided as to how to enforce a judgment.

Argentina - 1 case

The Argentine Government has requested information as to the enforcement of visitation rights. Information as to how to enforce a judgment was provided.

Uruguay - 1 case

The Uruguayan Government has requested the enforcement of a custody decree in California and was provided with information regarding the UCCJA and the California arrangement with the Government of France.

Requests originating in foreign countries

Hungary - 2 cases

The Hungarian Government has made two requests for the return of Hungarian children retained in the U.S. by a parent. One case involved the retention of two girls, an Hungarian and a dual Hungarian/American. The Hungarian child was returned through an amicable arrangement of the parents. The dual national child remains in the U.S. The case is currently in litigation in Illinois. The second case involved an older (15 yrs.) who remained in the U.S. of his own accord with his father. His mother had died in Hungary and custody had been awarded to the maternal grandparents. He came to the U.S. to visit his father and never returned. The case is in suspense at this time.

Iceland - 1 case

The Icelandic Government requested the Department's direct intervention in a case involving the abduction of an Icelandic child. The case was unusual in that the child was removed from the care of his foster parents by his natural parents who had given him up for adoption. The Department advised the Icelandic Government to pursue the matter through the courts.

France

(2 cases) The French Government has made two requests for assitance.
One case involved two chidren abducted to New York. We have not yet located these children.
The other case was for assistance in restoring visitation rights which were removed by a U.S. court following the abduction of a child to France. The mother retrieved the child back to the U.S. and immediately had the father's visitation rights revoked. We are supplying the French Gov't with a list of attorneys to give to the father.

CCS/EA CHILD CUSTODY STATISTICS BY COUNTRY AS OF 1/10/83

(Children taken from U.S. to EA countries)

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Australia	1 current 8 suspense 5 closed	Sen. Stewart, Sen Helms Cong. Madigan , Sen. Schweiker Cong. Ratchford
Fiji Islands	1 closed	----
Hong Kong	2 suspense	----
Indonesia	1 suspense	----
Japan	4 suspense 1 closed ---- ----	Cong. Edwards, Sen. Roth, Cong. Kostmayer Cong. Carney
Korea	2 current 1 suspense 1 closed	Cheney, Early ---- ----
New Zealand	3 current 3 closed	Sen. Melcher ----
Philippines	3 current 4 closed 2 suspense	cong Weicker cong. O'Neill ----
Singapore	2 current 1 closed 2 suspense	Sen. Percy ---- ----
Taiwan	1 current 2 closed 2 suspense	---- cong. Mattox Sen. Danforth

	CURRENT	SUSPENSE	CLOSED
SUB TOTAL:	12	25	21
TOTAL:	58		

CCS/EA CHILD CUSTODY STATISTICS BY COUNTRY AS OF 1/10/83

(Children taken to U.S. from EA countries)

The Government of New Zealand requested assistance for the return of New Zealand children taken to the U.S. Senator Helms expressed an interest in this case.

CCS/NEA CHILD CUSTODY STATISTICS BY COUNTRY AS OF 1/10/83

(Children taken from U.S. to NEA countries)

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Afghanistan	---	---
Algeria	---	---
Bahrain	---	---
Bangladesh	---	---
Egypt	3 current	Sen. David L. Boren, OK; Rep. William Whitehurst, VA; Rep. Frank Horton, NY (and red-border action memo).
	3 suspense	Rep. Ron Wyden, OR; Rep. Jim Santini and Sen Howard Cannon, NV.
India	6 suspense	Sen. Ted Stevens and Rep. Don Young, AK.
Iraq	---	---
Iran	1 current	---
	1 suspense	---
Israel	1 completed	---
	5 suspense	Reps. Phil Gramm and Jim Wright, TX; Sen. Daniel P. Moynihan, Rep. Hamilton Fish , Jr., NY, and newspapers in NY and Israel; Philadelphia Inquirer.
Jerusalem	2 current	---
	1 completed	---
	1 suspense	---
Jordan	2 current	---
	4 suspense	Sen. Rudy Boschwitz and Rep. Arlen Erdahl, MN.
Kuwait	2 current	---
	1 completed	---
Lebanon	2 current	Sens. Edward M. Kennedy and Paul E. Tsongas, Reps. Barney Frank and Margaret M. Heckler, MA, Sen. Daniel P. Moynihan, and Rep. Gary A. Lee, NY. (all interested in one case)
	1 completed	---
	4 suspense	Sen. Mark Hatfield and Rep. Ron Wyden, OR; Rep. Gary A. Lee, NY; Sen. S.I. Hayakawa and Rep. Robert J. Lagomarsino, CA; Sen. Daniel P. Moynihan and Rep. Stephen Solarz, NY.

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Libya	1 suspense	Sen. J. Bennett Johnston and Rep. Robert L. Livingston, LA.
Morocco	1 suspense	---
Nepal	1 suspense	---
Oman	---	---
Pakistan	2 current	---
	1 completed	---
	3 suspense	Rep. Jake Garn, UT; Rep. John N. Erlenborn, IL.
Qatar	---	---
Saudi Arabia	4 current	Sen. Paul Laxalt, NV; Sen. Gary Hart, CO, newspapers in U.S. and Middle East, Vice Presidential briefing; Sens. Sam Nunn and Mack Mattingly, GA; Sen. David Durenberger and Rep. Bill Frenzel, MN, and Rep. Pat Williams, MT.
	1 completed	---
	4 suspense	Sen. Charles Percy, IL; Sen. Edward M. Kennedy, MA.
Sri Larka	1 suspense	---
Tibet	1 completed	Rep. Judd Gregg, NH.
Tunisia	1 suspense	---
UAE	2 current	---
	1 completed	---
	1 suspense	---
Yemen (Sana)	2 completed	Rep. Tony Coelho and red-border action memo.

SUBTOTALS: 20 current; 10 completed; 37 suspense.

TOTAL: 67

CCS/NEA CHILD CUSTODY STATISTICS BY COUNTRY AS OF 1/10/83

(Children taken to U.S. from NEA countries)

COUNTRY	NUMBER	TYPE AND ORIGIN OF REQUEST FOR ASSISTANCE
Egypt	1	Note from Embassy of Egypt asking for help in locating 2 children allegedly taken from Egypt in violation of father's custody rights. (The mother had a U.S. court order, and the father came to the U.S. with his Egyptian order and took the children by force. They are now in Egypt.)

Jordan	1	Telephone call from maternal grandmothe of children brought to U.S. by their mother without their father's permissic an American woman (whose departure from Kuwait under similar circumstances had had caused an international incident ar resulted in a consular officer's being declared PNG) had advised her to alert us in case there were any repercussions resulting from her daughter's departure
Kuwait	1	Kuwaiti attorney asked Amembassy Kuwait for information on having a Kuwaiti custody order enforced in New York. Embassy referred the request to CCS/NEA
UAE	1	Social worker, Juvenile Court Renewal Unit, Bakersfield, CA, contacted Amembassy Abu Dhabi for help in arranginc child's return to mother in UAE after California court ordered her return.

TOTAL: 4

CCS/AF CHILD CUSTODY STATISTICS BY COUNTRY AS OF 1/10/83

(Children taken from U.S. to AF countries)

COUNTRY	NUMBER + STATUS	CONGRESSIONAL OR OTHER INTEREST
Ghana	1 current 1 suspense	---- ----
Kenya	1 current 1 suspense	---- ----
Liberia	1 current 2 closed	---- ----
Nigeria	7 current 18 closed	Reps. Bolling, Deckard, Derrick Fowler, Fraser, Hall, Holt, Hutto, McKinney Sen. Cranston, Eagleton, Hayakawa, Mathias, Metzenbaum, Sarbanes
Senegal	1 closed	Rep. Stark
South Africa	1 current 4 closed	Rep. Forsythe Sen. Williams
Zambia	1 suspense 1 closed	Rep. Schroeder ----
Zimbabwe	1 closed	----

	CURRENT	SUSPENSE	CLOSED
SUB TOTAL:	11	3	27
TOTAL: 41			

CCS/NEA cases which may be of interest to the subcommittee

Senator Kennedy has inquired about two cases involving children in the Middle East:

(1) On 4/7/82, a Lebanese man, after feigning a reconciliation with his American wife, took their 3 year old daughter from her mother's home in Massachusetts and disappeared. The mother obtained a court order the next day awarding her temporary custody and restraining the father from taking the child out of Massachusetts.

We learned of the abduction on 4/30/82 from a child custody organization. It was then believed that the child was in Australia or Germany. We took steps to try to find out whether the child was in either of those countries.

In fact, the child had been taken to Canada. The mother tried to have her custody order enforced there, but the father fled with the child. It was ascertained that he had obtained a Lebanese visa for the child on 4/20/82 and the presumption was that they had gone to Lebanon. The child custody organization provided information in late May 1982 which enabled us to initiate a search for the child in Lebanon. A visit to the remote village where she was believed to be staying with her grandmother was arranged for the weekend of 6/5/82. Due to the war which broke out at that time it was not possible for information to be obtained. During the war, inquiries concerning the child's whereabouts were referred to a special task force which had been set up to monitor the situation in Lebanon and try to obtain information about Americans there. When the situation normalized, the mother asked that the Embassy not make further inquiries so as not to alert the father to her interest in regaining custody of the child. She learned through friends that the father had left the child with his sister in Beirut and had gone to another country to work. The mother decided to take legal action to recover her child.

She arranged for an attorney to represent her before the Lebanese courts. We assisted her and her attorneys in the U.S. in having documents authenticated so that they could be entered as evidence in Lebanon. Late last month, we received a report from a congressman in New York, where the mother now lives, that she had been awarded custody of the child in Lebanon but was being prevented from leaving the country. We sent a telegram to the Embassy. The Embassy reported that temporary custody actually had been given to the father's sister with whom the child had been living and that the father's relatives would not allow the mother to leave the house with the child, but would permit the mother to stay there with the child. There was no prohibition on the mother's departure from Lebanon if she wished. The court apparently had summoned the father from Iraq, and he arrived on 4/30/83. At a hearing on 5/10/83, the Lebanese court awarded temporary custody to the mother who is now staying a convent school with the child. The attorney is confident that she will be awarded full custody eventually, but fears that the father may be able to delay the child's departure from Lebanon by taking the case to the religious courts, which normally handle family matters, or to the Lebanese Supreme Court.

We have received inquiries from nine other Congressional offices, the press, relatives, and friends of the family.

(2) A Rhode Island woman contacted Senator Kennedy's office in August 1981 in order to obtain assistance in ascertaining whether her son (DOB 12/1/78) had been taken to Saudi Arabia by his father. All three are native-born Americans. The information which we received was insufficient to permit a check of Saudi records which might have indicated whether the father and son were in Saudi Arabia. Neither was registered at the Embassy in Jidda.

In October 1981, after the mother had moved to Ohio, additional information was provided which enabled the Embassy to contact the father. A consular officer saw the child and reported to the mother on his well-being. The father stated that he wished the mother to join him in Saudi Arabia and agreed to provide the mother with periodic reports on the child. When he failed to write or call in May 1982, a consular officer again talked to the child and reported that he was healthy and happy. We provided the mother with an information sheet on Saudi views on child custody prepared by the Embassy and a list of attorneys in Jidda. The mother realizes that, in view of Saudi law and her lack of financial resources, it is unlikely that she would be able to regain custody of her son unless she and the father can reach some agreement themselves. She has not requested any further assistance from us.

No Congressional inquiries have been received on the following cases, but the parents who had custody-related inquiries reside in states represented by members of the subcommittee.

(3) On 6/21/82, we received a telephjone call from a naturalized U.S. citizen living in Ohio who said that his U.S. citizen daughter (DOB 9/5/74) had been living in India with his brother and sister-in-law for most of her life. He and his wife went to India to bring the child to the United States. He returned to the U.S. after a couple of weeks. The mother was to return to the U.S. with the child on 6/20/82, but the aunt ran off with the child. The mother returned to the United States as planned because she was afraid that that her husband's relatives might harm her if she attempted to regain custody of the child. The father wished to know how to have his right to custody enforced.

We sent him information on consular responsibilities in child custody disputes, a copy of Indian laws on custody (which seem to give the father the right to claim his daughter at any time), and a list of Indian attorneys in case he could not work out a solution with his brother and sister-in-law. We also gave him the name, address, and telephone number of a United Way agency which is part of a world-wide network that has experience in counselling families with international problems of this nature.

At the father's request, the U.S. Embassy at New Delhi was asked to contact the aunt and uncle and, if possible, discuss the situation with them and find out if the child was all right. The father planned to get in touch with other relatives and ask them to intercede on his behalf before taking any legal action. The Embassy informed the father on 7/2/82 that the superintendant of police in the town where the child was staying had contacted the family and reported that the child was well. The Embassy advised the father to hire an attorney in India to pursue the case if an amicable settlement was not possible.

(4) A Maryland woman first contacted the Department in November 1976 concerning the welfare of her son (DOB 1/23/71) who was in Yemen with her husband, a naturalized U.S. citizen. In 1977, the father returned the child to the mother in Baltimore, but took him away again in 1979 or 1980.

The mother contacted the Department again in June 1980 and indicated that she wished her husband to return her child to her. Attempts were made to reach the father by telephone and by writing to the post office box where the mother had written her husband and son before. Unsuccessful inquiries were made at schools and elsewhere in Taiz where it was believed that the father and son were residing.

On 10/14/80, the father wrote to the Embassy in Sanaa, referring to the many letters he had received from the Embassy, and said that he did not live in Taiz; however, the return address he gave was a different Taiz post office box. Letters sent to that address by the Embassy and the mother went unanswered, as did telegrams which the mother sent.

The Embassy was finally able to make contact with the father and spoke to him by telephone on 4/2/83. He provided a new address and promised to write to his wife. The address was given to the mother who stated that she would write to her husband and son.

(5) The U.S. Embassy at Tel Aviv learned of an unusual child custody dispute in March 1982 when the Israeli attorney for a 15 year old American girl inquired about obtaining proper documentation for her so that she could have her visa extended and remain in Israeli with her Israeli husband.

It developed that she had left her mother's house in 1977 to live with a man with whom she was having sexual relations. In May 1979, a Maryland court awarded custody of the girl to her sister. In May 1980, she moved into an apartment provided by the man. In March 1981, wishing to end their relationship, she returned to her mother. A month later, she went to New York where she met her husband, who believed her to be 19 when he married her on 11/28/81. (She had a hospital birth certificate, obtained for her by the man with whom she had lived, which showed her birthdate as 7/19/62, making her appear to be 4 years older than she actually is.) Not long after her marriage, the man brought charges against the husband for attempted rape, and the NY police ordered the girl returned to Maryland where a court, unaware of the nature of the relationship between the man and the girl, awarded custody to the man, pending further investigation. The girl ran away to her husband in NY and went with him to Boston where she obtained a limited passport by making false statements on her passport application and presenting her fraudulent hospital birth certificate. They travelled to Israel on 1/26/82. Her attorney believed that the Maryland court was prepared to award custody to the husband upon receipt of some sworn statements.

The Embassy and Department were not requested to take any action on the custody aspects of the case, only on questions involving the fraudulently-obtained limited passport and the issuance of a new one containing correct data.

Israel has expressed an interest in the Hague Convention on the Civil Aspects of International Child Abduction.

(6) A Philadelphia woman called us on 1/13/82 concerning the abduction of her children by her naturalized U.S. citizen husband on 12/14/81. She believed that they were somewhere in Israel. She had called her mother-in-law in Israel who had been evasive when asked where the children were. We asked the Embassy to try to locate the children and ascertain their welfare.

On 1/19/82, the U.S. Embassy at Tel Aviv was able to reach the father and one of the children by telephone at the father's mother's house. The Embassy reported to the mother that the children were well and happy and that the father had said that if she obtained a court order he would honor it.

We subsequently received a letter from the mother's attorney in Philadelphia indicating that the mother was awarded custody of her missing children on 12/18/81. The lawyer's inquiry and the substance of a telephone conversation of 1/20/82 with the mother were conveyed to the Embassy by telegram on 1/22/82. The Embassy responded to them by telegram on 1/25/83 and sent the attorney a list of attorneys in Israel on 1/20/83. The gist of the response was that the fahter and children were visiting relatives and friends and had no address other than that of the father's mother. On 2/1/82, the Embassy informed the mother that a further inquiry on that date had revealed that the father and children were travelling in the Negev. The father's mother to whom the consular officer spoke said that the children were well. The consular officer asked her to inform her son of the consular officer's wish to see the children in order to report to their mother on their welfare.

EXPLANATORY COMMENTS ON THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

NOVEMBER, 1980

The Hague Conference on Private International Law

The Hague Conference on Private International Law is an international organization of some 29 countries, including the United States. It seeks to resolve, primarily through the development of international conventions, particular practical legal problems arising in the field of "private international law". Such problems arise when the activities of private individuals and organizations involve more than one country, and thus potentially are governed by the different and possibly conflicting laws and legal systems of these different countries.

The Hague Conference recently held its 14th Session at the Hague in the Netherlands, from October 6-25, 1980. At this session, the member countries unanimously adopted a Convention on the Civil Aspects of International Child Abduction. The United States participated actively in the development of this Convention. In view of the large number of separate States and foreign countries which might be involved in international child abductions concerning the United States, a multilateral treaty is the most feasible way for the United States to address this problem.

Objectives of the Convention

The overriding purpose of this Convention is to discourage abduction of children in custody-related disputes, based on the view that these abductions are harmful to children and that custody disputes should be settled either voluntarily or by the courts of the country where the child habitually resides. This underlying policy is also incorporated in the U.S. Uniform Child Custody Jurisdiction Act, which has been adopted by some 44 states. The Convention is intended to discourage child abduction by restoring the situation which existed before the abduction, thus removing the benefits which the abductor might otherwise gain from removal of a child to a foreign country or wrongful retention of a child abroad. It seeks to do this by establishing two basic mechanisms: (1) an expedited and simplified legal proceeding for the prompt return of an abducted child and (2) a system of governmental "Central Authorities" in each country to assist with and expedite the process of locating and returning abducted children.

The Convention also provides a framework for protecting visitation rights (called "access rights"), recognizing that child abduction may be caused or aggravated by problems concerning exercise of visitation rights.

As the title of the Convention indicates, the Convention deals exclusively with the civil aspects of child abduction. It does not cover child abduction under the criminal law or extradition from and to foreign countries.

Major Provisions of Draft Convention

The Convention applies to abductions prior to a judicial custody determination as well as to post-decree abductions; it covers child removals or retentions by joint custodians; it applies to abductions by a parent as well as a parent's agent, relative, a foster parent, a prospective adoptive parent, or by any other person who removes or retains a child in order to assume the child's care and control.

The person who seeks return of the child would usually be a parent, but might also be a relative, guardian, foster parent, or other person or an institution, such as a child care agency.

The Convention would not apply once the child reaches the age of sixteen.

The Convention would require each contracting country to designate a Central Authority (or several central authorities) to serve as a clearinghouse for incoming and outgoing applications for the return of children. Applicants would normally make their application on a model form developed for use with the Convention. Central Authorities would have responsibility to cooperate and exchange information with Central Authorities of other countries; they would take steps to locate children through their own efforts or with the assistance of other agencies, such as governmental locating services; they would aid in encouraging the voluntary return of a child or an amicable resolution of the custody or visitation dispute; they would facilitate the institution of legal proceedings when necessary, including assisting in obtaining legal representation; finally, the Central Authorities would help arrange for the actual return of the child. (See Article 7.) Article 10 reiterates and gives special emphasis to efforts by Central Authorities to obtain the voluntary return of a child, where this is possible and appropriate.

If the Convention were ratified by the United States, a Central Authority would be established in one of the departments of the Federal Government; state offices might also be involved. The Office of Foreign Litigation in the Department of Justice currently serves as the Central Authority under two other international conventions. At the present time the question of precisely how the Convention would be implemented in this regard is under study.

Articles 11-17 of the Convention contain the major provisions applicable to legal proceedings for the return of an abducted child. In most countries legal proceedings are conducted by the courts; but in some countries, such as Denmark, Norway, and Switzerland, legal proceedings involving child custody can also take place before administrative bodies. For this reason the Convention refers to "judicial or administrative authorities" in the articles dealing with legal proceedings. For simplicity's sake these Explanatory Comments will use the term "courts" rather than "judicial or administrative authorities".

Court proceedings are expected to be completed within a short time, lasting no longer than six weeks, if possible. (See Article 11.) Such expeditious action is thought feasible because the court would not consider or reconsider the merits of the custody question (See Article 19); under the Convention the court would simply determine whether there had been a wrongful removal or retention of a child. Once that fact has been established, the court would be required to "order the return of the child forthwith". (See Article 12.)

Where court proceedings for return are not begun within a year of the date of wrongful removal or retention, the court will return the child unless it is demonstrated that the child is integrated in the new environment. Persons seeking the return of children are thus encouraged to take prompt action; no special time allowance is made for location of the child. On the other hand, there is no absolute time limit for the return of the child under the Convention. In particular, where the abductor lives in hiding or moves repeatedly in order to avoid detection or return of the child, he or she will face considerable difficulties in demonstrating that the child has become integrated in a new environment and should therefore not be returned.

As having been mentioned, the Convention seeks to restore the situation as it existed before the abduction by returning the child to the country of origin. If the abductor claims to have a better right to custody or to be the more suitable custodian, he or she must address a court in the country of origin after the child's return, where a full hearing may be had on the merits of the case. The court in the country to which or in which the child has been abducted has a different function under the Convention. It does not consider or reconsider the merits of who should have custody of the child. It has the limited function of determining whether there has been an improper removal or retention of a child. If that fact has been found, it orders the prompt return of the child.

The Convention defines some exceptional circumstances in which it was deemed necessary to allow the courts some discretion not to return children. However, if the Convention is to deter abduction through prompt return, this discretion must be sparingly exercised even in the enumerated exceptional circumstances in order to give effect to the strong policy and rationale in favor of return.

(1) The court may refuse to return the child if the person or institution having the legal custody of the child was not actually exercising custody rights or had consented to the removal or retention. (See Article 13a.) This provision is not intended to apply to cases where the legal custodian may have entrusted the actual care of the child to someone else. However, where the custodian has effectively abandoned the child or has surrendered custody rights to the abductor, the court may find that there has been no real "abduction". (See Article 3.)

(2) The court is also not bound to order a child's return if there is a grave risk that this would expose the child to physical or psychological harm or would otherwise

place the child in an intolerable situation. (See Article 13b.) This is an emergency clause which calls for the exercise of the inherent power which courts in many countries already possess to protect children from danger.

The burden of proof in both cases is on the person opposing the return of the child. It is up to him or her to convince the court that clear facts exist which bring one of the exceptions into play. In reaching its conclusion, the court must take into account any information obtained from the country of origin relating to the social circumstances of the child. The court must then further consider whether it should exercise its discretion not to return the child under the circumstances. The court might, for example, decide to refer a doubtful case to a court in the child's place of habitual residence for fact-finding before reaching its own decision.

(3) A court may also refuse the return of the child if the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views. (See Article 13, para. 2.) Again, the court must consider any relevant evidence from the home country before it makes its decisions.

It should also be noted that a court is not required by the Convention to return a child where this would not be permitted by the fundamental principles of its own governing law concerning the protection of human rights and fundamental freedoms. (See Article 20.) For example, where a custody decision was arrived at without notice and opportunity to be heard and there would be no opportunity to reopen the decision, this could be a violation of the United States Constitution's Bill of Rights and a court would then not be bound to return a child.

Articles 16 and 17 are primarily aimed at the abductor who seeks to shield himself or herself behind a custody decree obtained in the country of refuge before the other party has had an opportunity to request the return of the child in the proper court. (For example, the whereabouts of the child may not have been known earlier.) These articles are based on the principle that the courts in the place of a child's habitual residence should decide custody questions concerning the child. Article 16 provides that a court shall not make or enforce a custody decree where it has notice that there has been a wrongful removal or retention, unless and until it allows a reasonable time for the institution or return proceedings under the Convention and it is determined that the child is not to be returned. Article 17 provides that a custody decree recognized by the country of refuge will not by itself be a ground for not returning the child. Although the reasons for the decree may be considered by the court in applying the Convention, the obligation to return the child under the Convention takes precedence over any prior decree.

The Convention is designed as the major remedy for the return of children which are abducted. However, Article 18, 29, and 34 emphasize that whenever another remedy may also be available, the Convention in no way prevents individuals from seeking that remedy or courts from ordering it. The Convention does override any conflicting law which would prevent the return of a child, but does not limit the application of any law which would provide for the return of a child. For example, the Convention does not prevent courts from continuing to apply the provisions of the Uniform Child Custody Jurisdiction Act to international abductions.

Article 21 provides that Central Authorities shall also assist in protecting and securing access rights. The Convention does not provide any new legal proceeding regarding access comparable to the "prompt return" proceeding provided for abductions. It is anticipated, however, that Central Authorities can be of assistance in making legal and other arrangements which will encourage and protect the exercise of established visitation rights, for example, obtaining a custody decree in the state of visitation conforming to a decree in the state of the child's residence, posting of bonds to guarantee return, advance provision of return air tickets, and visa and passport arrangements. By establishing a framework for the communication and cooperation of governments and courts of different countries, it is hoped that problems concerning visitation rights can be more efficiently and effectively resolved.

According to Article 26, the Central Authorities in each country would assume their own administrative costs. There would be no application fee. Travel and other expenses incurred by the applicant, including the cost of the child's return, would be borne by the applicant. Courts are authorized, however, to order abductors to pay for such expenses. Attorneys fees might be paid for either by the applicant(and awarded against the abductor, where appropriate) or by the government, depending on the country involved and on the system of legal aid in that country.

ÉDITION DÉFINITIVE
FINAL EDITION

CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

HAGUE CONFERENCE
ON PRIVATE INTERNATIONAL LAW

QUATORZIÈME SESSION
FOURTEENTH SESSION

ACTE FINAL
FINAL ACT

(excerpts containing the text of the
1980 Hague Convention on the Civil
Aspects of International Child Abduction
and
the recommended form for the
Request for return)

Final Act of the Fourteenth Session

The undersigned, Delegates of the Governments of Argentina, Australia, Austria, Belgium, Canada, Czechoslovakia, Denmark, the Arab Republic of Egypt, Finland, France, the Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan, Jugoslavia, Luxemburg, the Netherlands, Norway, Portugal, Spain, Surinam, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela, and the Representatives of the Governments of Brazil, the Holy See, Hungary, Monaco, Morocco, the Union of Soviet Socialist Republics and Uruguay participating by invitation or as Observer, convened at The Hague on the 6th October 1980, at the invitation of the Government of the Netherlands, in the Fourteenth Session of the Hague Conference on Private International Law.

Following the deliberations laid down in the records of the meetings, have decided to submit to their Governments –

A The following draft Conventions –

I

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –

a to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where –

a it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention –

a 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II – CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

a to discover the whereabouts of a child who has been wrongfully removed or retained;

b to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d to exchange, where desirable, information relating to the social background of the child;

e to provide information of a general character as to the law of their State in connection with the application of the Convention;

f to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

g where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain –

a information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

b where available, the date of birth of the child;

c the grounds on which the applicant's claim for return of the child is based;

d all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by –

e an authenticated copy of any relevant decision or agreement;

f a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

g any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV - RIGHTS OF ACCESS

Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V - GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units –

a any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

b any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI – FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the

accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.
The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.
Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.
Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force –

1 for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

2 for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.
If there has been no denunciation, it shall be renewed tacitly every five years.
Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.
The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following:

1 the signatures and ratifications, acceptances and approvals referred to in Article 37;

2 the accessions referred to in Article 38;

3 the date on which the Convention enters into force in accordance with Article 43;

4 the extensions referred to in Article 39;

5 the declarations referred to in Articles 38 and 40;

6 the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;

7 the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the .... day of .... 19.., in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

F The following Recommendation concerning the draft Convention on the Civil Aspects of International Child Abduction –

The Fourteenth Session,

Recommends to the States Parties to the *Convention on the Civil Aspects of International Child Abduction* that the following model form be used in making applications for the return of wrongfully removed or retained children –

Request for return

Hague Convention of .... on the Civil Aspects of International Child Abduction

REQUESTING CENTRAL AUTHORITY OR APPLICANT	REQUESTED AUTHORITY

Concerns the following child .... who will attain the age of 16 on .... 19....

NOTE The following particulars should be completed insofar as possible

I – IDENTITY OF THE CHILD AND ITS PARENTS

1 *Child*

name and first names
date and place of birth
habitual residence before removal or retention
passport or identity card No., if any
description and photo, if possible (see annexes)

2 *Parents*

2.1 Mother: name and first names
date and place of birth
nationality
occupation
habitual residence
passport or identity card No., if any

2.2 Father: name and first names
date and place of birth
nationality
occupation
habitual residence
passport or identity card No., if any

2.3 Date and place of marriage

II – REQUESTING INDIVIDUAL OR INSTITUTION (who actually exercised custody before the removal or retention)

3 name and first names
nationality of individual applicant
occupation of individual applicant
address
passport or identity card No., if any
relation to the child
name and address of legal adviser, if any

III – PLACE WHERE THE CHILD IS THOUGHT TO BE

4.1 Information concerning the person alleged to have removed or retained the child

name and first names
date and place of birth, if known
nationality, if known
occupation
last known address
passport or identity card No., if any
description and photo, if possible (see annexes)

4.2 Address of the child

4.3 Other persons who might be able to supply additional information relating to the whereabouts of the child

IV – TIME, PLACE, DATE AND CIRCUMSTANCES OF THE WRONGFUL REMOVAL OR RETENTION

V – FACTUAL OR LEGAL GROUNDS JUSTIFYING THE REQUEST

VI – CIVIL PROCEEDINGS IN PROGRESS

VII – CHILD IS TO BE RETURNED TO

a name and first names
date and place of birth
address
telephone number

b proposed arrangements for return of the child

VIII – OTHER REMARKS

IX – LIST OF DOCUMENTS ATTACHED*

Date ....

Place ....

Signature and/or stamp of the requesting Central Authority or applicant

....

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* e.g. Certified copy of relevant decision or agreement concerning custody or access; certificate or affidavit as to the applicable law; information relating to the social background of the child; authorization empowering the Central Authority to act on behalf of applicant.

Senator **Specter**. Mr. Odom, let us turn to you. You are Chief of the European Services Division, Office of Citizens Consular Services, U.S. Department of State. We welcome you here and look forward to your testimony. I understand that there is just Mr. Hergen's statement, but do you have anything you would like to add?

Mr. **Odom**. Well, just in support of Mr. Hergen's statements on the convention, our office feels that the convention itself would be a quantum leap forward in the prevention of parental kidnaping in the international arena.

We feel that our office, as the central authority for the convention, would have sufficient resources as it is today, due to the diminishing effect of the convention on our present caseload, to handle competently any questions that arise under the convention with regard to the role of the central authority.

Senator **Specter**. What additional burden, if any, will be placed on the FBI as a result of this international agreement.

Mr. **Odom**. That, I do not believe I am competent to answer, Mr. Chairman.

Senator **Specter**. How about that, Mr. Hergen? The issue was raised about how many American children go overseas. How many overseas children come to the United States, and to what extent will that be an additional burden on the FBI?

Mr. **Hergen**. This is an area in which I think I can speculate, and I would speculate that any additional burden on the Federal Bureau of Investigation would be very minimal. That is my opinion.

Senator **Specter**. Well, it is not infrequent that the State Department predicts for the Justice Department minimal inconvenience, is it?

Mr. **Hergen**. That is typical.

Senator **Specter**. Ms. Hernandez, do you have anything you would like to add beyond what has been testified to?

Ms. **Hernandez**. No, sir, I do not think so.

Senator **Specter**. Mr. Hergen, is there anything you want to add?

Mr. **Hergen**. I just want to thank the subcommittee very much for inviting us to come here and I hope we have shed some light on this subject. I hope we will be up here again soon with a convention.

Senator **Specter**. Well, you have. We are very much interested in this issue. I think it is a big step forward to have an international treaty on the subject and we will be pleased to work with you on the enabling legislation. The matter is really one for concern by the Juvenile Justice Subcommittee, and as we tackle the problem on a national basis and effect more activism on the part of the FBI in the pursuit of child kidnaping cases, even where parents are involved, that is very significant.

To the extent that it is an international problem, which it certainly is, the State Department is to be commended for the activities you have undertaken and we will work with you. So, thank you very much.

Mr. **Hergen**. Thank you, sir.

Ms. **Hernandez**. Thank you.

Senator **Specter**. We will call our next witness, the Honorable Christopher Foley, municipal court judge, Milwaukee, Wis.

Mr. Foley, I have two pieces of paper; one designates you as a municipal court judge and the other designates you as assistant district attorney.

STATEMENT OF HON. CHRISTOPHER FOLEY, MUNICIPAL COURT JUDGE, MILWAUKEE, WIS.

Judge **Foley**. I got a promotion in the interim, I think, Mr. Chairman.

Senator **Specter**. Your resume is not up to date?

Judge **Foley**. The rest of it is.

Senator **Specter**. It is nice to have a resume which is not up to date, indicating an immediate, recent promotion. How long have you been a judge, Judge Foley?

Judge **Foley**. Twenty-three days, Mr. Chairman. [Laughter.]

Senator **Specter**. Congratulations.

Judge **Foley**. Well, thank you, I think.

Senator **Specter**. How do you like being a judge compared to being an assistant district attorney? Bear in mind that assistant district attorney is widely recognized as the best of all possible jobs. [Laughter.]

Judge **Foley**. Well, I recognize that, Mr. Chairman. Some people would characterize us as moving on to better and bigger things, but I am not sure that that is true.

Senator **Specter**. Bigger, but not better.

Judge **Foley**. Bigger; that is certainly correct.

Senator **Specter**. Well, we welcome you here, Judge Foley. Your statement will be made a part of the record in full, as is our practice, and we would appreciate it if you would summarize, leaving the maximum amount of time for questions and answers.

Judge **Foley**. Thank you, Mr. Chairman. I want to thank you for the opportunity to speak today. I think it is particularly appropriate that the hearings are being held today on National Missing Children's Day.

I wanted to add that I was recently appointed to the board of directors of Child Find, which, I'm sure with the knowledge you have displayed already in this hearing, you are aware is the largest organization dedicated to finding missing children in this country. We are on our way up to New York City after this for their National Missing Children's Day ceremonies.

When I was asked to testify, your staff asked me to reflect upon the interrelationship of State and Federal authorities and the available means at the Federal and State levels to resolve cases of parental kidnaping. I took that to take into account both civil and criminal aspects of this problem, and I am going to concentrate on the criminal aspects.

I would point out that I think this Congress has done a tremendous job, particularly recently with the enactment of the Parental Kidnaping Prevention Act, in affording both criminal remedies and civil remedies. I think that the Uniform Child Custody Jurisdiction Act and the Parental Kidnaping Prevention Act, the civil aspects of those, do provide a tremendous resource for parents and children who are victimized in this fashion to recover children.

However, I think that simply through the effectiveness of those civil remedies, we are increasingly seeing parental kidnaping cases which no longer involve only interstate flight. They are more commonly characterized by concealment schemes and/or international flight, and that is because the courts of the States to which that person might flee with a child are no longer open to modify the provisions of an existing custody decree.

Senator SPECTER. Judge Foley, how serious a problem is this nationally or internationally, in your judgment?

Judge FOLEY. Both internationally and in terms of interstate parental kidnaping, it is epidemic proportions, in my opinion, Mr. Chairman.

Senator SPECTER. How many parental kidnaping cases are there in the United States a year, in your judgment?

Judge FOLEY. I would say that the figure of 100,000 is probably pretty accurate, if not a little low.

Senator SPECTER. How do you account for the fact that there are so few cases referred to the FBI by way of complaint—as you heard the testimony, some 896 in 1981; 592 in 1982, and this year, 245 through May 20?

How do you account for the fact that there are so few cases when, in your view, there is in excess of some 100,000 cases a year?

Judge FOLEY. Well, I account for it in a number of ways, Mr. Chairman. First of all, I think it starts at the level of the local police and the local district attorneys. I do not think that we are as cognizant at the local level of the criminal law remedies that are now available for this problem as we should be.

In almost all States now, this is covered by some criminal statute, although, as I will note later, I think that all States should have a felony statute to cover it in order to govern what is the most common phenomenon—interstate flight.

Senator SPECTER. So, you think there are just a great many cases—more than 100,000 a year—and they simply are not recognized, reported, prosecuted or pursued?

Judge FOLEY. Absolutely, Mr. Chairman. I think that victims as well as district attorneys and police are, first of all, not cognizant of the remedies. Second, I think there is a demonstrated lack of commitment on the part of both local law enforcement authorities and Federal law enforcement authorities to use the remedies that are available.

Senator SPECTER. How do you account for that lack of commitment—limited resources, indifference, or what?

Judge FOLEY. I would first of all attribute it to lack of knowledge on the part of victims and the local law enforcement authorities; second, limited resources; third, indifference.

Senator SPECTER. How do we solve those problems, starting with the lack of knowledge? What is the answer there, if there is one?

Judge FOLEY. Well, I think the answer there is just what we are doing today. I think we have to dramatize this problem. I think that the people who are involved in it have to educate, I think most importantly, victims. I think it is more important to educate the victims of parental kidnaping as to what their remedies are than it is to educate the lawyers.

I have found so often that lawyers seem to be getting in the way, saying "He will be back in 2 days," or "she will be back in a week; just hang in there," not being cognizant of the fact that this person, possibly from the first moment that that child is taken, is in violation of a State felony statute.

I think that is where we start, and I think we do it by dramatizing this problem and by educating lawyers and the public about what the remedies are.

Senator **Specter**. How serious is this problem in terms of damage or danger to the children?

Judge **Foley**. Well, I do not think there can be at this point, Mr. Chairman, any dispute as to the effect that this has on children.

Senator **Specter**. We heard testimony earlier today about the murder of a child 4 years old by a father who had abducted the child when he was about to be apprehended. What cases have you seen which illustrate the problem of danger to the abducted child?

Judge **Foley**. Well, I think that case—and not an isolated case, I might add—is perhaps the most dramatic.

Senator **Specter**. Have you seen such cases?

Judge **Foley**. We have. We have seen a Colorado case in which the children were abducted for the second time, in violation of a Colorado felony statute. The children were found shot to death about 20 miles from their home a day after I spoke to the mother by phone. There was a felony warrant outstanding; the father had killed himself as well.

I have heard of cases of children being drowned, and so forth. I might point out to the committee that one of the most frequent instances of parental kidnaping that we see in Milwaukee, and it is a tremendous problem that we need a remedy for at the State level, is what I call institutional snatch-back, in which children's custody is transferred to the State to protect those children. The parents from whom they were taken somehow——

Senator **Specter**. That is called institutional snatch-back?

Judge **Foley**. That is my phraseology, Mr. Chairman. The children are taken because they need to be protected. The parents determine their location and snatch them back, and that is how I characterize it. It is a very frequent phenomenon in this country.

Senator **Specter**. What resources are available, though, at the State level to safeguard the welfare of the abducted child if they are able to return them from the arrested parent?

Judge **Foley**. That is a problem, Mr. Chairman, that pointed out and made a suggestion about in my prepared remarks. One of the problems that we do experience when an arrest and/or a recovery of a child is made is just what status that child has under the State law.

In Wisconsin, I think when a child is abducted and there is no other responsible adult there with the child, the child becomes a child in need of protection or services. We file a juvenile petition in the juvenile court, and the custodian need only come in and enroll their judgment under the Uniform Child Custody Jurisdiction Act and ask that that judgment be enforced.

I think that those procedures should be streamlined; that officers who believe a child has been taken in violation of a parental kidnaping statute should be authorized by State statute to return the child to the custodian, if there is sufficient proof of that, and there should be immunity for a police officer that does that if he acts with reasonable good faith.

Senator SPECTER. Judge Foley, what do you think of the practices of the FBI prior to December of last year in insisting that there be a showing of danger or abuse to the child before the FBI would be activated to enforce the Federal legislation against abduction by parents?

Judge FOLEY. Well, Mr. Chairman, I can characterize my experience with them as being a history of frustration and anger before this year.

Senator SPECTER. What was the practice that led to your frustration and anger, as you have described it?

Judge FOLEY. Well, they had a generalized and acknowledged policy that parental kidnaping constituted nothing more than a domestic relations controversy. Therefore, despite what the Congress had directed them to do, they had a general policy militating against entering parental kidnaping cases, and demanded, first of all, that there be proof of some danger to the child, which becomes a problem for a local law enforcement official when we have no idea where the child is.

Second, they required that the Criminal Division in Washington approve UFAP's, which takes the determination away from the U.S. attorney who is closest to the individuals who can give them the information about why they should enter the case.

Additionally, and I found this in my own experiences, the time factor involved is just an outrage.

Senator SPECTER. Can you give me an illustration of a specific case as to how that problem arose and how you dealt with it?

Judge FOLEY. Mr. Chairman, I can give you one very good example, and I could give you many, many more. In 1980, after a 1½ year search, we located a man in St. Augustine, Fla., by the name of Bartel. We located him; he had been missing at that time for 3 years.

We had done everything within our power to get to the St. Augustine local law enforcement authorities all of the information as to where Mr. Bartel was, where the children were, and the existence of our felony warrants.

Somehow, and it remains a mystery to me, they were not able to effectuate the arrest of Mr. Bartel. That was January 1981, Mr. Chairman, about 2 weeks after the enactment of the Parental Kidnaping Prevention Act.

Mr. Bartel contacted me directly by phone from an unknown location after he had evaded the St. Augustine authorities and told me he was going to Mexico and that I should say goodby to his ex-wife because she would never see her children again.

Senator SPECTER. How did he happen to call you? Did you have a nice, friendly relationship?

Judge FOLEY. No, we did not have a friendly relationship at all, Mr. Chairman. He first had an intermediary contact me and then he contacted me himself.

I contacted the FBI and over a period of 2 weeks, while I was sure he was in Mexico by now, we argued back and forth about whether they should issue a UFAP. In my opinion, that is certainly a circumstance where the FBI would be interested in apprehending this individual.

Senator **Specter**. How had you tracked him to Florida?

Judge **Foley**. Mr. Chairman, that was something that came up earlier, and I guess I disagreed a little bit with the committee's views. I think we do have the capability at the State law enforcement level, if we have a felony statute, to handle a great number of these cases on our own.

Senator **Specter**. How do you do that?

Judge **Foley**. We located Mr. Bartel—and I hope this will not hit the national media because I think we will have some parental kidnapers scrambling to cover their tracks—but we located Mr. Bartel by tracing the various owners of a car that we had known had been used to transport the children out of the State.

The car originally had been registered in Wisconsin and then showed up in one intervening State that escapes my recollection, and then in the State of Alabama. We contacted the eventual owner of that vehicle, who turned out to be the ex-wife of Mr. Bartel's present brother-in-law, who informed us that the children were living in St. Augustine, Fla., under the name—I cannot remember, Mr. Chairman.

We then contacted the school systems by mail—a mass mailing to the school systems throughout the St. Augustine area. We were subsequently contacted by that school system and informed that the children were in that school under that alias.

Senator **Specter**. Well, that investigation that you conducted certainly sounds like a routine, run-of-the-mill investigation which would lead to a result. I compliment you on the skill of the investigation.

Most prosecutors' offices can barely keep up with the robberies and the homicides and the rapes, let alone designate investigative resources in an interstate manner. I once had an office with 160 assistant DA's and a great many detectives and some 30,000 cases to handle in the city of Philadelphia, and could hardly devote the kind of resources to that kind of an investigation.

Judge **Foley**. I think that is absolutely true, Mr. Chairman, and I think that there are two solutions to that. There is one that we have always advocated and had a routine procedure for in Milwaukee. We saddle the parent with a lot of the investigative duties in these cases and we provide a guiding hand. We provide legal process, when it is necessary, to subpena documents that may lead to the parents.

And when we find that the resources that we have available to us are not sufficient for us to track this individual, or if we feel that there is some danger to the child or international flight is going to be involved, we request FBI assistance. Pretty uniformly, we get it denied, but we do request FBI assistance.

Senator **Specter**. Judge Foley, you have described problems you had with the FBI prior to their change in practice. After their change in practice last December, what experiences have you had?

Judge **Foley**. Mr. Chairman, I can tell this committee not only since the change in the policies but before that, this change in policy comports with the desires of most of the U.S. attorneys that I have spoken with, and with most of the field agents of the FBI.

They want to help us in these cases. They are as compassionate as we believe we are, but the Criminal Division just did not see it that way. I have found since that time a tremendous improvement in the relations between the local law enforcement officals and the FBI that has brought one child home from our jurisdiction.

Senator SPECTER. Can you give me the illustration there as to how that has worked?

The cases are so much more informative than the generalizations.

Judge FOLEY. I think that is true, Mr. Chairman.

Caleb Brodie was taken by his father about 9 months ago now. His location was unknown and we conducted an investigation ourselves for approximately 4 to 5 months. Shortly after the Criminal Division deleted their requirement of a showing of danger, which we had no evidence of, and we further had no idea where Caleb was, I applied to the U.S. Attorney's Office in Wisconsin for a fugitive felon warrant. That fugitive felon warrant was issued.

We made contact and shared information with some field agents in California, who did an outstanding job. And I want to give the FBI credit for that. They had very much narrowed the field as to where Mr. Brodie was concealing himself. We had suspected that it was the San Diego area.

About 3 weeks after they entered the case, I was contacted by an intermediary who indicated to me that if we would drop our warrants, Mr. Brodie would come home with Caleb. I discussed that with my superiors and with the mother of the child and we agreed to accede to his demands for a number of reasons. One, we did not know where Caleb was; and, two, there had been past threats to go to Mexico, which is a very popular spot for parental kidnapers, and we suspected that he was in direct proximity to the Mexican border.

We dropped our warrants. I suspect that the Department will, at some point, point that out to a congressional hearing. And Mr. Brodie came home with Caleb, who is now at home with his mother.

Senator SPECTER. Do you think the Department will object to your having dropped your warrants?

Judge FOLEY. Yes.

Senator SPECTER. Why? You did not drop them in a voluntary sense; you dropped them to make a deal.

Judge FOLEY. That is certainly true, Mr. Chairman.

Senator SPECTER. And an arrangement of that sort is totally justifiable.

Judge FOLEY. I think it is, but I think the Department does not feel that way.

Senator SPECTER. It is in the nature of a plea bargain, which the Department has from time to time engaged in.

Judge FOLEY. Well, I think under those circumstances, Mr. Chairman, the absconding parent, male or female, holds all the cards, and the cards happen to be a precious little child in those circumstances. And I have never been able to sit across the table from a mother or a father and say, "Well, he has offered to come home, but we are going to see that the legal process takes its course, even though you are never going to see your child again."

Senator Specter. And the child did come home?

Judge Foley. Caleb is home, healthy, happy, beautiful.

Senator Specter. How old is Caleb?

Judge Foley. Caleb is 2, nearly 3.

Senator Specter. And what happened to the father?

Judge Foley. The father is appearing on television programs, defending his actions. We have not debated directly yet, although we were on the same program at one time. We dropped the warrants, Mr. Chairman.

If there is any reoccurrence, I promised him that I would not only charge him for that instance, which I am not able to do now since my promotion, but I promised him that he would face the original charges as well as new charges, which he will.

Senator Specter. Judge Foley, is there a need for any Federal legislation in this field, in your judgment?

Judge Foley. Mr. Chairman, I do think the committee and this Congress ought to consider a number of things. I think one thing that was brought up by Senator Metzenbaum that I found interesting that he picked up on right away was that I think the Parent Locator Service ought to prioritize requests based on parental kidnaping.

I do not think that those requests should have to compete with the 235,000 other requests that they do receive. I do think that at the State level, there are a number of things that have to be done. We ought to have felonies in each State jurisdiction.

I think, Mr. Chairman, as the situation is now in California and Wisconsin, it ought to be an offense not only to take a child from a State, but it ought to be an offense, and in this case it can be a misdemeanor offense, to harbor a child within a State.

I think we can save substantial resources in terms of extradition if, in fact, the case can be resolved in the asylum State rather than underoing the extradition process.

Those are some of the suggestions that I can and would make to the committee.

Senator Specter. How about Federal legislation? Do you think Federal legislation is necessary?

Judge Foley. Yes, I think that we do need legislation there.

Senator Specter. How about making parental kidnaping a Federal offense? What is your view on that?

Judge Foley. My own view, Mr. Chairman, is that it should not become a Federal offense.

Senator Specter. Why?

Judge Foley. I am very concerned, Mr. Chairman, that if it becomes a Federal offense, these offenses will routinely receive the lowest priority treatment by the Department. I think it removes a parent victim from the responsible party.

Anybody in Milwaukee could walk into my office and sit down and demand to talk to me. That is not necessarily true with the Federal——

Senator Specter. Well, if it became a Federal offense—and I am not saying it should be; I am just exploring it—but if it became a Federal offense, that would not take away concurrent State jurisdiction.

Judge **Foley**. Congressman Sensenbrenner, who happens to be from our State, had proposed legislation, and I have lost track of it at this point, that would establish concurrent jurisdiction. I think that is the only way it should be criminalized federally.

Senator **Specter**. Well, would you favor it if there were concurrent jurisdiction?

Judge **Foley**. Yes. I think, Mr. Chairman, that may be appropriate. I guess my feeling would be that there should be some time lapse involved in order to conserve the Bureau's Federal resources because I think they will have a justified argument for demanding substantially more money to handle this problem if there is Federal criminalization.

Senator **Specter**. Well, I have interrupted you substantially, Judge Foley. What else would you like to tell us?

Judge **Foley**. I think we have covered most everything. Your knowledge of the area is very evident by your questions, Mr. Chairman. If I can just quickly refer to my notes, your staff asked me to reflect on the National Missing Children's Act. I think your next witness probably—who, I might point out, is going to be the recipient of an award of honor, I believe, from Child Find this evening—he must be going up to New York as well, so I think I will leave that to him, if I may.

Mr. Chairman, in terms of the civil aspects, I think that under the Parental Kidnaping Prevention Act the assessment of costs of an enforcement proceeding against an absconding parent should no longer be discretionary. I think that it should be a matter of Federal law that the court must impose the costs of recovering a child under the civil aspects of that Act against an absconding parent. I would suggest that to the committee.

As I said in my prepared statement, I hate to suggest to the Congress at times when we are facing the economic problems we are—but one of the very important services of Child Find is a finder's hotline. It is a very expensive service and I think if there were some Federal assistance for that finder's hotline, it solicits information from parties and has a toll-free hotline from parties who have information about children that they believe are missing. And I think that that would be a very worthy cause for the Federal Government or State government.

I thank you, Mr. Chairman.

Senator **Specter**. Well, thank you very much, Judge Foley, for your very helpful testimony. I again congratulate you on your appointment to the bench. You come to a branch of government which has enormous talent.

It is a great country for many reasons and near the top of the list is the judiciary. I had occasion to be in El Salvador the weekend before last, and I can tell you that a principal difference between El Salvador and the United States is the judiciary. There, the judiciary is terrorized and the victim of machinegunning and bombings.

The U.S. judiciary is a great part of the tradition of our country and we have a lot of talent there. I have some concern for how much talent we are devoting to the judiciary.

You are advanced in age; you turned 30, I guess, before you became a judge.

Judge **Foley**. No, shortly thereafter, Mr. Chairman.

Senator **Specter**. Shortly thereafter?

Judge **Foley**. Yes.

Senator **Specter**. Well, you do not have to stay a judge forever, Judge Foley.

Judge **Foley**. Well, in the interim, I will try and live up to the traditions of the judiciary.

Senator **Specter**. Thank you very much.

Judge **Foley**. Thank you, Mr. Chairman.

[The prepared statement of Judge Foley follows:]

PREPARED STATEMENT OF JUDGE CHRISTOPHER R. FOLEY

I wish to express my gratitude to this committee for the opportunity to speak on the subject of parental kidnapping and the available means to resolve or prevent this tragic crime. The committee, in holding these hearings on National Missing Children's Day, has recognized the magnitude of this problem nationwide and demonstrated a willingness to commit the resources of this Congress and nation to prevent the senseless deprivation of a child's fundamental right to enjoy the love and support of both of his parents.

Between January, 1980, and April, 1983, when I assumed my present judicial position, my primary responsibility as an assistant district attorney in Milwaukee County was the investigation and prosecution of parental kidnapping cases. The assignment was part of a conscious effort on the part of the Milwaukee County District Attorney's Office to standardize procedures for handling the investigation and prosecution of these cases, with special emphasis upon prevention. During those years, I have repeatedly witnessed the impact parental kidnapping has on child and adult victims alike and the contempt fostered by parental kidnapping for the legal process developed to protect the children of divorce. Based upon that experience, I can inform this Committee that the problem is now not only a national epidemic but a national tragedy as well.

During this period, I have had the opportunity to evaluate the legal resources available to resolve or prevent incidents of parental kidnapping, both civil and criminal. I hope the following observations and suggestions will be of assistance in fulfilling its obligation to improve available resources for the protection of the children of divorce.

CIVIL REMEDIES

The Uniform Child Custody Jurisdiction Act (hereinafter U.C.C.J.A.), the law in forty-eight states in this country, was promulgated to "deter abductions and other unilateral removals undertaken to obtain custody awards" U.C.C.J.A. Sec. 1(a)(5). The Parental Kidnapping Prevention Act (hereinafter P.K.P.A.) utilizes the exact same language in espousing the purposes of that federal legislation. P.K.P.A. Sec. 302(c)(6).

As the Committee is aware, those acts provide substantial deterrents to parental kidnapping and legal recourse to victimized parents faced with this tragedy. Among those provisions are:

1. The obligation to enforce child custody decrees of other states when that decree was granted by a court exercising jurisdiction in conformity with the acts and only to modify those decrees when the original court has lost or declines to exercise its jurisdiction as to the continuing question of custody, U.C.C.J.A., Sec. 13 and 14(1), 28 U.S.C. Sec. 1738A(a)and(f);
2. The authority to issue a valid child custody decree in favor of a "left behind" parent in the absence of the child when that absence is due to removal or retention outside the state by another parent, U.C.C.J.A., Sec. 3(1)(a)and(3);
3. The proscription against an "asylum" state court exercising jurisdiction to award or modify a custody decree when a custody proceeding is pending in another state exercising jurisdiction in conformity with the acts, U.C.C.J.A., Sec. 6 (1)-(3), 28 U.S.C. Sec. 1738A(g);
4. The authority to declare itself an inconvenient forum and refer the custody question to the more appropriate state together with the admonition not to exercise jurisdiction to award or modify a custody decree where the child has been improperly removed from or retained outside another state, U.C.C.J.A., Sec. 7 (1)-(9) and Sec. 8;
5. The authority of an asylum state court to award costs to a victimized parent incurred in recovering a victimized child, U.C.C.J.A., Sec. 7(7), Sec. 8(3), Sec. 15(2), 28 U.S.C. Sec. 1738A (C)(2)(A).

These civil remedies are extremely effective tools in instances in which the offending parent maintains communication with the left behind parent and intends to abide by determinations made by courts of the originating states and/or asylum state. The growing effectiveness of these remedies as the legal community and population at large has become aware of their efficacy is unquestioned.

These remedies do not, however, provide sufficient remedy and/or deterrent in every instance. The costs of these remedies are sometimes overwhelming. Parental kidnapping is not an uncommon phenomenon in low income families and the severe cutbacks in legal services available to the poor can render these remedies totally inaccessible.

Perhaps more commonly, these remedies are inaccessible because the absconding parent and child cannot be located. Ironically, the effectiveness of these civil remedies has given rise to the increasingly frequent phenomenon of a parent disappearing with a child for protacted periods, during which times the child is subjected to repeated name changes and repeated changes of locations while being deprived his/her fundamental right to have the love and support of both parents and to live in a safe and stable home environment. These actions emasculate available civil remedies and take the circumstances well beyond any episode which can be classified as "essentially domestic relations controversies." First Report on Implementation of Parental Kidnapping Prevention Act of 1980, p. 2.

CRIMINAL REMEDIES

The extremely detrimental impact that parental kidnapping has on the children of divorce in and of itself justifies the enactment of state criminal laws governing parental kidnapping.(1) Additionally, the crime itself evidences a contempt for a legal system dedicated to the best interests of the children of divorce which can and should not be tolerated.

As of September, 1982, all but two jurisdictions had enacted Statutes criminalizing some form of parental kidnapping. However, seven states treat the conduct exclusively as a misdemeanor which, in effect, eliminates the possibility of arrest outside the

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1. This detrimental impact, which is becoming increasingly well documented also tends to rebuke the Department of Justice's assertion that the offending parent's "affection for the child... is generally a guarantee of the victim's safety and well being." Fourth Report to Congress on Implementation of the Parental Kidnapping Prevention Act of 1980, p. 5.

originating state. As indicated in a subsequent section of this paper, a uniformity of treatment among states is a much needed reform.

In enacting the P.K.P.A., Congress eliminated a proposal to make interstate and international parental kidnapping cases a federal crime. In doing so, Congress unequivocally indicated that parental kidnapping is primarily a state law enforcement responsibility. Armed with appropriate and applicable felony statutes, local law enforcement officials have the most effective means to deter abductions and recover victimized children.

Local law enforcement authorities who issue charges and then routinely request F.B.I. intervention in any case in which interstate flight is evidenced, without initiating investigative efforts at the state level, abdicates their responsibility in our federal system. Such a practice cannot be justified by assertions that state law enforcement resources are limited because federal authorities quickly and perhaps overanxiously interpose a like excuse.

If local officials are to fulfill their obligations despite the limited time, manpower and resources available, it is imperative that those officials place the primary burden of investigation on the victimized parent. Local officials must provide a guiding hand and necessary legal process (i.e. investigative subpoenas) which, much like white collar crime, are indispensable to the location and arrest of absconding parents. Police and prosecutors must, however, stand ready to commit substantial time and effort when an arrest and recovery is at hand to assure that interstate law enforcement efforts facilitate the arrest and recovery. This delegation of responsibilites between police, parent and prosecutor is routine in Milwaukee and a manual establishes the guidelines for these respective parties.

Under the P.K.P.A. and Fugitive Felon Act, federal law enforcement officials have an appropriate and significant role to play in apprehending interstate parental kidnappers. Local law enforcement officials should never hesitate to request a fugitive felon warrant where past conduct or medical history indicates the child is in danger; where international flight appears imminent or likely; where local investigative efforts have been unsuccessful, considering the efforts of law enforcement personnel and those of the victim; where limited resources of the local governmental unit and/or victim-parent preclude more extensive local investigative effort.

This Committee has specifically solicited my input as to the Department of Justice and Federal Bureau of Investigation's performance under section 10(a) of the P.K.P.A. As the Committee is aware, I appeared in September, 1981, before the Subcommittee on Crime of the United States House of Representatives Judicial Committee on this very same topic. I indicated at that time, I believed the Department's attitudes and guidelines(2), were directly violative of the letter and spirit of Sec. 10(a). Specifically, I urged the Congress at that time to require the Department to delete:

1. The precondition of "independent, credible information that the child is in physical danger or is being seriously abused or neglected";
2. The precondition of prior authorization of the Criminal Division of the Department before the U.S. Attorney could seek a fugitive felon warrant.

Unfortunately, the Department continued to ignore the dictates of Sec. 10(a) between September, 1981, and January, 1983, to the detriment of many child victims of parental kidnapping. However, in January, 1983, the Department agreed to eliminate the two cited preconditions and to comply with the law "for a one year trial period".

I can honestly inform this Committee that this elimination of preconditions corresponds to the desires of the United States Attorneys and federal agents with whom I have corresponded. In one of the two instances in which we have since deemed it appropri-

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2. United States Attorney's Manual, Sec. 9-69-421 (1981).

ate to request federal assistance, it was primarily the efforts of two field agents in California which brought Caleb Brodie home to his mother after an eight month absence.[3]

Hopefully the elimination of these preconditions will continue to foster cooperative efforts between parent-victims and local law enforcement officials on the one hand and federal law enforcement officials on the other to the end that child victims will not suffer the traumas experienced by Benjamin and Rebecca Bayless who, over a five year period, are acknowledged to have lived in four different states under four different first and last names while, in order to avoid detection, having been withheld from school during substantial periods of time.

This Congress must make clear to the Department and Bureau that compliance with the law is an absolute standard, not subject to "one year trial periods". Any effort by the Department to reinstitute these preconditions at any time in the future should be firmly rejected by this Congress.

The Committee has also solicited my views on the recently enacted National Missing Children's Act. In expressing my views, I would be remiss if I failed to express my heartfelt thanks, and the thanks of all of America's Children and parents, to Senator Paula Hawkins, Jay Howell of her staff, the Walsh family, Sargeant Dick Ruffino of the Bergen County, New Jersey, Sheriff's Department and the staff of Child Find for their outstanding efforts on behalf of missing children culminating in passage of the act. It constitutes a giant step in the reordering of law enforcement priorities in this country in favor of the rights of missing children.

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[3] The Department and Bureau may, at some future point, emphasize that the local felony charge against Caleb's father was dropped. However, it should be noted that while the agents had made substantial progress in limiting the search area, Caleb's whereabouts were still unknown when, through an intermediary, Jeffrey Brodie offered to surrender Caleb if all warrants were dropped. Considering Brodie's past threats to flee to Mexico with the child and his suspected proximity to the Mexican border at that time, we felt it appropriate to comply with his demands and risk Department criticism at a later date.

In my experience with the act since its passage, it appears to be a tremendously effective tool for both parents and children to identify missing children. Police officers are now equipped to immediately identify a child whose vital records have been entered into the National Crime Information Center Computer pursuant to the provisions of the act. Obviously, these provisions are extremely important in instances of parental kidnapping, but also in instances of stranger abduction and runaways.

While we all earnestly hope the unidentified dead file established by the act will never establish the location of a missing child for a bereaved parent, the reality is that it will. However, the file is an extremely important tool to end the anguish of not knowing for a parent and to establish for those of us in law enforcement where to concentrate our efforts to locate the sick individual who has to be stopped to protect our children.

The burden now falls upon this Congress and those of us involved in the missing children's movement to educate law enforcement and, in particular, the general public as to the provisions of the act and the most effective means to utilize those provisions. To that end, these hearings hopefully will dramatize the importance of efforts throughout this country to fingerprint children. The efforts do not constitute an invasion of those children's right to privacy. The prints themselves, God willing, will never be entered into the N.C.I.C., but will remain forever in the safekeeping of their parents. Should the tragic need for them ever arise, as they did for five year old Bobbi Joe Fritz's mother when Bobbi Joe disappeared into thin air in Campbellsport, Wisconsin, on May 14, 1983, and remains missing as of May 22, 1983, my sincere hope is that any searching parent will have the prints available to aid in the search.

The civil and criminal remedies now available to deter and/or end incidences of parental kidnapping are substantial.

However, improvements at the federal state level are needed. I hope I am not too presumptious in suggesting the following reforms to this Committee.

INTERSTATE CRIMINAL REMEDIES

It is imperative that parental kidnapping, at least when it crosses state lines, be uniformly classified as a felony so as to permit criminal remedies to have interstate effect. Uniform felony classification will eliminate the pocket states in which parent-victims must rely exclusively on civil remedies in interstate cases.

An additional improvement in state criminal statutes governing parental kidnapping may conserve the limited resources available to combat this national problem by limiting expenditures for extradition of offenders. If, on a nationwide basis, it was a criminal offense to "detain", see Cal. Penal Code, Tit. 8, Sec. 278 and 278.5, or "withhold", see Sec. 946.71(3), Wisconsin Statutes, in violation of a custody decree, an absconding parent would violate the laws of both the decree state and the asylum state. My experience leads me to believe that substantial cost savings would be effected when the offense can be resolved in the asylum state without the costs of extradition.

A final alternative which this Congress must seriously consider is federal criminalization of interstate or international parental kidnapping. This alternative has the significant advantage of eliminating any dual-criminality questions in the area of international extradition. However, child and parent victims may fall through the cracks of concurrent federal and state jurisdiction, state officials asserting primary investigatory responsibility lies with the federal authorities who assert just the contrary, to the detriment of all.

Uniform felony classification and criminalization in the asylum state together with continuing good faith compliance by the Department of Justice with Sec. 10(a) of the P.K.P.A. will provide effective criminal deterrents to parental kidnapping.

RECOVERY AND RETURN

Present state criminal statutes do not sufficiently define the proper procedures state law enforcement officials should utilize upon arrest of an offender. State's should provide that the victimized child should be returned to the lawful custodian upon sufficient proof of that status absent a countermanding order of the asylum state's courts. See Cal. Penal Code, Title 8, Sec. 278 and 278.5. Additionally, a police officer who seizes and delivers a child to the lawful custodian who he/she reasonably believes has been taken in violation of a parental kidnapping statute should be granted civil immunity. See Maine Statutes Sec. 17A-303. Finally, the costs of investigation, location and recovery incurred by a victimized parent should be assessed against a convicted parental kidnapper. See Cal. Penal Code, Title 8, Sec. 278 and 278.5.

ASSESSMENT OF COSTS

Under the P.K.P.A. and the U.C.C.J.A., courts may, in their discretion, award legal and other costs to a victimized parent when an action is brought to recover a child taken in violation of a child custody decree. This Congress and the respective state legislatures should modify those provisions to require the imposition of costs agsint any party found by a court to have brought a child into the state in violation of the terms of an existing custody decree.

APPRISING LITIGANTS OF CRIMINAL PENALTIES

The respective state legislatures should enact legislation requiring that intitial pleadings in any "action affecting marriage" (i.e. divorce, annulment, paternity, custody, etc.) must contain notification of the provisions of any state criminal statutes governing parental kidnapping. See Sec. 767.085(2m), Wisconsin Statutes. This would have the effect of educating potential offenders, victims and, perhaps most improtantly, lawyers of the repercussions of an remedies for parental kidnapping.

PARENT LOCATOR SERVICE

Congress should consider amending the provisions of Sec. 9 of the P.K.P.A. to give priority to requests to the Parent Locator Service pertaining to the location of a parental kidnapper. Delays in the compilation of records upon which the P.L.S. relies already contribute to substantial delays in the ascertainment of useful information. Delivery of such information, once available, should be the top priority of the P.L.S.

FINDERS HOTLINE

Congress justifiably looks upon new requests for funding in these times with skepticism. However, at a time when public resources are being dedicated to hotlines for drug abusers, for arson and other types of crime, the only hotline operative in this country for individuals having information pertaining to missing children is privately funded and operated by Child Find, a private, nonprofit agency.

Appropriate governmental support for Child Find's hotline would permit necessary expansion and also facilitate wider distribution of the registry of photos of missing children which Child Find produces.

Again, I thank the Committee for the opportunity to speak and for their demonstration of commitment, on this National Missing Children's Day, to the rights of missing children in this country.

Senator SPECTER. Our final witness is Mr. Jim Scutt, investigator with the Alexandria Police Department.

Investigator Scutt, welcome. We very much appreciate your being with us and look forward to your testimony. Your statement will be made a part of the record, and in accordance with our procedure, we would appreciate it if you would summarize, leaving the maximum amount of time for questions and answers.

STATEMENT OF JIM SCUTT, INVESTIGATOR, ALEXANDRIA POLICE DEPARTMENT, ALEXANDRIA, VA.

Mr. SCUTT. I would like to thank you for giving me the opportunity to be here today. I think it is important for your committee and others contemplating legislation or changes in the very important area of missing children to talk to local law enforcement officials.

As we have heard today, the main responsibility for investigating not only parental abductions, but stranger abductions and missing kids, falls heavily on the shoulders of local jurisdictions, and we need all the help that we can get.

I really do appreciate the opportunity to have some time here to explain the pitfalls that one faces on the local level in investigating specifically parental abductions.

I think one important aspect that the public has in general is that they believe that we have at our disposal—and when I say "we," local law enforcement—we have at our disposal the resources of the entire country's law enforcement area, and that would include the Federal Government and the FBI. That is not always necessarily the case.

I think that you need to understand, also, the frustration that I feel and the rest of the local jurisdictions feel when we lose the authority that we have by virtue of our geographical area.

Specifically, if a child leaves the city of Alexandria and is taken to another State, if that State is Maryland or the District, I can cross State lines and, with the assistance of local jurisdictions there, follow up a lead.

However, in a case that I am most familiar with, since it took me 9 months to locate this little girl, they ended up in California and I was frustrated to the point where I had no help at all; I had no Federal help that was available to me.

At the time, I could not necessarily meet the requirements for a UFAP warrant, so I could not ask for the assistance of the FBI. I had to rely on professional courtesy, professional courtesy being local jurisdictions in California dropping what they had to do as their important functions——

Senator SPECTER. How was that professional courtesy, Investigator Scutt?

Mr. SCUTT. It was tremendous. It was probably the best response that I have ever seen from local police departments. I would have replies from a local jurisdiction within a 2- to 12-hour period, where they would actually send an investigator to a location.

For instance, they had information that a phone call was made by the suspect from a pay phone. They sent an investigator to the area, which I had located with the assistance of the phone company. They found that pay phone and they talked to people in the general area and came back with information that the child had been there.

Now, the leads were 2 to 3 weeks old, but understand that that was the hottest lead I had for 8 months.

Senator SPECTER. Did you have any problem in leaving your home State of Virginia to travel all the way to California to pursue that investigation?

Mr. SCUTT. I had no opportunity whatsoever to travel from Virginia to California, except for the 2-day trip for extradition. I had to rely solely on the——

Senator SPECTER. So it was all done by telephone, on the requests that you made?

Mr. SCUTT. That is correct.

Senator SPECTER. But you did go there for the extradition proceedings?

Mr. SCUTT. That is correct. It was frustrating for me to have to sit and wait patiently by the phone day in and day out, hoping and praying that the local jurisdiction had not only the manpower available, but that their caseload allowed them to break away from whatever was important for them to follow up a lead for me.

Senator SPECTER. What is your recommendation as to what ought to be done to change that?

Mr. SCUTT. I have not had an opportunity to investigate a parental kidnaping case since the temporary changes that were put into effect that would assist the issuance of a UFAP. But I would wholeheartedly encourage that when that review comes up in the next couple of months, they are made permanent changes to that statute.

Senator SPECTER. How many parental kidnaping cases have you had the occasion to pursue, Investigator Scutt?

Mr. SCUTT. In the 3½ years that I was with the youth bureau—I am no longer with the youth bureau in Alexandria; I have been transferred to another section—I probably worked 30 to 40 cases, Senator.

Senator SPECTER. And what is your evaluation of the danger which is posed to children who are victims of parental kidnaping?

Mr. SCUTT. If I can draw on the case of little Jenny, the case I was talking about in California, I interviewed her when she came back. Understand that for 9 months, I would look at her picture every day and know that she was out there someplace and know that I was going to find her.

I had never met her, but I knew a whole lot about her just from the investigation.

Senator SPECTER. How old was she?

Mr. SCUTT. She was 4 at the time she was taken.

Senator SPECTER. And what danger was she in?

Mr. SCUTT. Well, talking to her when she returned, I discovered that on occasion she would be left in a trailer at a trailer park, which was quite mobile for the individual to leave if he thought law enforcement people were close by.

She would be left for hours on end to babysit a little puppy and watch TV. She could tell you the TV shows just about any day of the week from 9 in the morning until 11 at night. That was the babysitter that she had.

Her father had a severe alcohol problem to the point of blackouts and hospitalization. It is difficult to prove to the FBI for the UFAP statute that the child is in danger because of the confidentiality statutes. In a lot of cases, in order for me to document that, I have to have records that only he can sign releases for.

Now, it takes time, but a court order or a search warrant is available. That is another means for me, but——

Senator SPECTER. To prove that he is an alcoholic and therefore would be likely to subject the child to danger?

Mr. SCUTT. That is correct, Senator.

Psychologically, who knows what the problem is? She is currently under care for that, but her father has already asked for visitation rights on a limited basis. She refuses to go; she does not want to because she is afraid she will never see her mother again.

Senator SPECTER. Has the father obtained visitation rights?

Mr. SCUTT. It is still in the courts at this time. You see, he was sentenced to a 5-year prison term, all of it suspended with 3 years' probation. And during that 3-year probation, he was not to have any visitation rights for the child at all. But that was in a circuit court. He now goes to a juvenile court, where they may not be aware of the situation and he is applying for temporary visitation.

Senator SPECTER. Well, how can the juvenile court not be aware of what has happened to him in another court? Is that not routinely brought to their attention by someone—say the mother?

Mr. SCUTT. It can be. It depends on how well informed the prosecutor is who is fighting for the rights of the child and the mother. But I think that the thinking of the courts and local law enforcement for years has been that the parents have some rights and the kids have very few.

Senator SPECTER. Investigator Scutt, there has been estimated to be about 100,000 parental abductions each year, but very few of those, perhaps as many as 2,000, are reported to law enforcement authorities. Do you have an opinion as to why the reporting rate is so low?

Mr. SCUTT. Senator, is that to law enforcement or is that to the Federal Government?

Senator SPECTER. Federal law enforcement.

Mr. SCUTT. Well, I think one thing is that the local level is not informed enough as to the resources that they have available to them. I was in the youth bureau for 2 years, had worked parental cases, and did not know about UFAP and did not know about the Federal parent locator system until the mother of this child, who had some knowledge of it, brought it to my attention.

So, I think that we need to train people at the local level as to what is available and how to utilize what is available, for one. And I think that the FBI needs to show that they are definitely behind us. I am not advocating that the FBI take over investigation of this.

Senator SPECTER. Do you think the FBI's change of policy shows that they are now behind you?

Mr. SCUTT. I do, and I think it would be a whole lot easier for us now to get the FBI involved.

Senator Specter. What recommendations would you have for local law enforcement by way of education or programing to handle this kind of a problem better?

Mr. Scutt. I think we need to educate the prosecutors.

Senator Specter. How about the detectives?

Mr. Scutt. Well, I think, financially and geographically, the detectives are hurting considerably. But I think that programs such as the program instituted in Alexandria with Operation Fingerprint and the statements at seminars that Dick Ruffino and myself are trying to put out to local law enforcement—I think they just need to have their eyes open considerably and know that there are other resources; do not feel the frustration of being alone in this thing, because they are not alone. There are alternatives in the investigation.

Senator Specter. Investigator Scutt, thank you very much. Is there anything you would care to add?

Mr. Scutt. Well, if I can quickly scan my notes, I did want to say something about the Federal parent locator system. I attempted to use that and I think that there was a change in the reporting statute as to—I think it is annually now that employers must report new information

Senator Specter. For the record, describe what that system is.

Mr. Scutt. Well, it will assist me in locating an address for an individual, if they can do that, as stated today, through the IRS and social security records. One of the drawbacks to this is that not all States participate, and if you live in a State that does not participate in the program, then you cannot utilize the service.

Virginia fortunately does, but I was told by the lady who runs the program in Richmond that I had more leads than she could ever get me in a short period of time with the Federal parent locator service.

Senator Specter. What do you think of Operation Fingerprint?

Mr. Scutt. I love it. It is an invention of Dick Ruffino's, who put the bug in my ear.

Senator Specter. Would you describe that for the record? There is a very handsome brochure on Operation Fingerprint with the Alexandria Police logo on it.

Mr. Scutt. Well, that was developed for two reasons, and I am proud to say that the Alexandria police was the first jurisdiction in the State of Virginia to start this. It came out of little Jenny Moore, so it is amazing what a little 4-year-old girl will do for you.

It was done for two reasons: one, to educate the public. When we go to schools, PTA's and civic associations, we hand these out to the parents and to the kids. It also assisted our office in Alexandria in spreading the word to local police departments. Fairfax County, Montgomery County, and other jurisdictions started to pick up on this and it was an easy way for us to explain the program.

It caught fire to the point where we had to print up brochures just to——

Senator Specter. What is the program?

Mr. Scutt. It is a voluntary program whereby children of any age—the youngest that we have done has been 6 months old—will be fingerprinted either at a school or a local community shopping center, and the parents will maintain the prints.

The police department will not maintain the prints under any circumstances. The prints will be given back to the parents. We know that fingerprinting is not the answer, and we tell the parents that fingerprinting your child will not prevent him or her from being abducted.

We recommend that they start a package of identification on their children. That would include dental records; that would include a personal history sheet and an updated photograph of the child every 6 months or at least once a year, along with the fingerprint record.

So, we are trying to educate the public and police officers that there are some preventive measures out there that will at least give people some peace of mind that there is a hope that their child will not be buried in an unidentified grave.

[The prepared statement of Mr. Scutt follows:]

PREPARED STATEMENT OF JAMES W. SCUTT

The American public has entrusted their local law enforcement agencies with the responsibility of investigating parental abductions. It has been my experience that these unfortunate victims and their families are disillusioned by our restricted capabilities. They do not understand all of the legal problems these cases can generate. They believe we have at our disposal the vast resources of the nation's entire law enforcement community. These resources include accessibility to the federal government. It is heartbreaking to see the expression on their faces when they finally realize that they and the local jurisdiction stand alone in their search for the young victim.

One of the major difficulties faced by local law enforcement is the restrictions placed on them by their geographical jurisdiction. In cases where information leads you to believe the victim and perpetrator are in another state, you have to rely on the professional courtesy extended by the police in that locale. A number of variables will dictate the type of response you receive. You hope that they have the manpower and low case load that would allow them to respond to your request immediately. If this is not the case, your request will undoubtedly be placed on the back shelf. Knowing full well that a time delay may cost you a chance of recovery, you sit and patiently wait for a reply. It is a sad commentary on our society when the potential recovery of our most precious resource hinges on professional courtesy.

Unlawful Flight to Avoid Prosecution (UFAP). This federal statute is presently the only vehicle available to local police officers which allows them access to the FBI. There are some restrictions that must be overcome before the Bureau will act, but since recent temporary measures have been installed, it has become easier to obtain the (UFAP) warrant. These new guidelines are only temporary and will be closely scrutinized by the Department of Justice after one year. They are subject to change. The major changes are:

1. The police department will no longer have the burden of proof that the child is in danger, abused or neglected.
2. The request for a (UFAP) warrant will now be handled in the same manner as other fugitive felony cases.

The Department of Justice is to be applauded for taking these steps. I am here to encourage the Department to implement these changes on a permanent basis. It will greatly assist the local police investigation if they need to utilize UFAP and the services of the FBI.

Currently under UFAP you must show the government that a felony warrant is on file for the suspect. Also, through the prosecutor's office, you must indicate your desire to extradite.

There are millions of American children presently being held political pawns by their local politicians. At the present time there are approximately twelve states and territories without felony statutes for parental kidnapping. This virtually closes the door on the victim's family and the local police in their quest for FBI assistance. The application for a UFAP will not be fulfilled because of this injustice. When will the local politicians wake up to the fact that these cases are crimes needing their immediate attention. When will their constituents demand a positive response by their elected officials. This is a local political issue that can only be resolved by the state officials in these states. It cannot and should not be the responsibility of the federal government.

Another sensitive area of the UFAP statute is that the local prosecutors must extradite the arrested suspects. In communities where tight budgets exist and there is a choice between whether a rapist or armed robber is returned to stand trial over a parent who has kidnapped his child, the community would most likely demand the return of the rapist or robber. Stories of prosecutors telling the victim that he or she would extradite only if the victim pays the expenses have been related to me. I have also heard of prosecutors advising the Department of Justice of their desire to extradite, only to discover they had never intended to extradite in the first place. They only used the UFAP statute as a vehicle to facilitate the return of the child.

There are numerous incidents where the criteria for a UFAP was met by both the victim and the state only to be told by the FBI or U.S. Attorney that they could not become involved and no UFAP would be issued thereby cutting off the services of the FBI's 8,065 agents to the searching parent and local police. It is evident that abuses of the statute take place on both sides of the aisle; but, regardless of where it takes place, the people hurt by the abuses are the children (the number of which grows each year).

In a case close to my heart, I searched for a little four year old girl by the name of Genny for nine long months. During this ordeal, I found that I needed the services of many local, state and federal agencies. Some of this assistance I got...some just never materialized. To be honest, Genny's safe return to her mother was accomplished for the most part through professional courtesy. For eight of those nine months, the only warrant on file for the father was a misdemeanor warrant. Even though it was felt that the two were no longer in Virginia, I could not show proof positive to a local magistrate that they had been seen or heard from in another state. This in effect disallowed me the option of requesting UFAP. I realized early in the investigation that the hard work would have to be done without the aid of the FBI.

I turned to the federal parent locator file, which the state of Virginia is an active participant in, for assistance in locating a possible new employer of Genny's Dad. What I found was a program that in theory would be great. However, the reality of the program is that it is too slow and may not be able to furnish you with the information you are looking for.

As it was explained to me, not all states participate in the program. If you live in a state that does not participate, you can not utilize the program. You cannot access the I.R.S. computers. In accessing the files, I discovered that a new reporting law for employers to report new personnel has been changed so it is now done with less frequency. It may also give you old information. The system might be six to eight months behind the suspect and the job they may have held. When I tried to use the system, I was informed that my investigative leads were more up to date than anything the locator file could do. It was explained to me that the only real benefit would be in a case where there were no leads at all. Knowing that the first thirty days are the critical time in these investigations, I realized the locator system was useless to me at this stage of investigation.

Shortly after this little girl's picture went across the A.P. wires with the story of President Reagan's signing the Missing Children's Bill in October, 1982, the proof positive came. Leads developed so fast for three days from counties in Southern California that I was in desperate need of assistance. These leads were the hottest I had received in three months, and I was sure I would have Genny home soon. However, these sightings turned out to be three weeks old. My frustrations really set in when I realized I did not have first hand control of my investigation now because of the geographical boundaries. I needed someone in California law enforcement to help me. I thought...who better than a field agent of the FBI. I soon found out that without a request an approval by the Department of Justice for a UFAP warrant, the Bureau could not aid me. I was left with the thought of professional courtesy again. How demoralizing to be so close yet so far!

To further frustrate matters, my suspect appeared to be on the move. With each move I had to make contact with a new local law enforcement agency and hope and pray they could feel the desperation in my voice. The response by the California authorities, from the local police department that aided me, to the fine work of a young, understanding prosecutor, was more than I could have hoped for. It was obvious to me that their main concern was the return of Genny, sparing her the trauma of foster care while the courts in Virginia and California battled over who had jurisdiction.

Ideally, it would have expedited matters if I could have made contact with one field office and one agent, and worked exclusively with them as

Genny and her Dad traveled from city to city. However, at such a late stage in the case and as fast as the investigation was evolving, applying for a UFAP would have only delayed the investigation. There was no guarantee I would have been granted one anyway.

Little Genny raised the conciousness of one naive investigator. She opened my eyes to a world of horror stories. Stories that include the tragic tale of 100,000 plus parental kidnappings each year. We should not, as concerned police officers and politicians, be lulled into the idea that there is no real danger in parental kidnappings. They are with one of the parents, aren't they? It would be more understandable if these children were taken out of love and concern. The fact is they are taken out of spite or despair...out of contempt and even hatred for the spouse and the system they feel wronged them. These children are in danger!

During the course of my investigation, I never once asked Genny's Mom if she had any means of identifying her daughter should the need arise. I know the answer would have been no. In discovering that Genny could easily have become another grim statistic of an unidentified dead child, I began to look for a way to prevent it from happening to her or others in Alexandria. What I found were fingerprint programs which had been started in a small number of communities outside of this metropolitan area.

Operation Fingerprint was started by the Alexandria Police Department Youth Services Unit with the aid of community groups. With the dedication of my fellow officers, many of whom gave their free time to assist, we became the first police department in the state of Virginia to conduct such a program. We have developed a booklet outlining the need for such a program and a short explanation of how the program works. Included in the booklet are other steps we advocate parents to take to safeguard against abductions both parental and stranger.

Here are the key elements to our program:

1) It is done on a strictly voluntary basis.

2) The police department does not retain the prints. They are turned over to the parents upon completion.

3) We count heavily on community involvement such as schools and civic groups for success of the program.

Our goal is to have completed between 7,000 and 10,000 students before the end of the school year.

We realize that fingerprinting our children is not enough. We advocate that the parent keep a package on each child. This would include fingerprints, photographs, and dental records along with a personal history which is kept up to date. We are meeting with community groups to educate parents and school personnel of the dangers. The students currently have three films available to them in school which explain, at their level, that there are certain people who they can trust and confide in, and there are others that present a danger to them.

I would like to close by sharing with you a little of Genny who said when she was reunited with her mother, " I love you Mommy. I knew you were looking for me."

Thank you.

ALEXANDRIA POLICE

OPERATION FINGERPRINT

The Alexandria Police Department has become one of an increasing number of law enforcement agencies throughout the country that have endorsed and become actively involved in fingerprinting youngsters of the community. This project is in response to a growing awareness by the public of the plight of MISSING AND/OR ABDUCTED CHILDREN.

We, the public, will spend untold thousands of dollars to protect our property. We will inscribe identifying markings on our T.V., stereo, etc. in hopes that it could be traced and returned in the event it is stolen, yet when it comes to our most precious resource, our children, we do nothing to guarantee their safe return should they run away or become the victim of an abduction.

SOME FACTS TO CONSIDER:

* Over one million children run away each year.

* 100,000 children are abducted by one of their parents each year.

* 20,000 to 50,000 children are reported runaways or abducted by strangers and are not heard from for at least a year.

* 2,500 to 3,000 persons are buried in John and Jane Doe graves each year. A large number of them are children, and their parents will never know of their fate.

* Without fingerprints or dental charts it is nearly impossible to make positive identification of a body.

* The crime has no prejudices. Your family could fall prey to it regardless of who you are or where you live.

WHAT IS OPERATION FINGERPRINT?

It is a community project organized by the Alexandria Police Department, Youth Services Unit, local service clubs, and schools both public and private, to assist the police in locating and identifying missing children. This project is conducted solely on a **voluntary basis.** Parents may be requested to sign a permission slip prior to completion of the card. Once the card is completed with the prints and other data, such as name, address, and date of birth, the card will be given to the parents or guardian for safe keeping.

Under no circumstances will the Police Department maintain the card. One option is to request that the school system place your child's fingerprints in their school records (again on a voluntary basis). This might be necessary to ensure the safekeeping of the card and to allow the card to go with the student throughout his/her school years.

HELPFUL HINTS:

For younger children, a few days prior to the actual taking of the prints, work with your child using finger paint. Hopefully this will ease any fears that he/she may have.

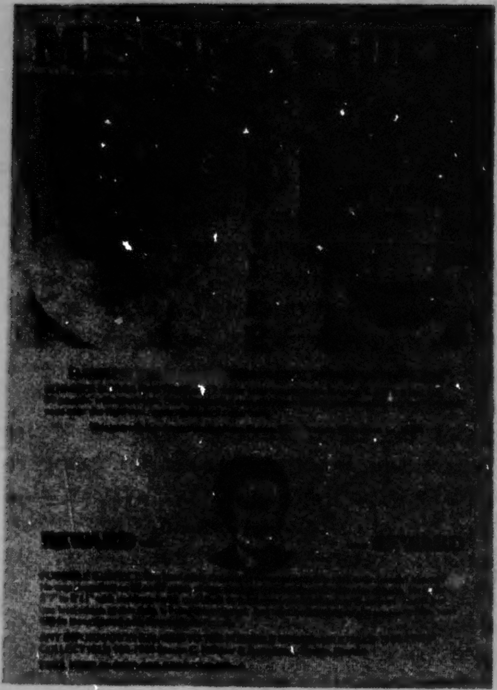
SUGGESTIONS:

- Maintain fingerprints on each of your children.
- Maintain dental records on the children.
- Take a yearly picture of your child.
- Maintain the dental records and photo with the fingerprints, in a secure location.
- Report any suspicious strangers or vehicles in your neighborhood.
- Should your child run away or be abducted, call the police at once. There is no waiting period for reporting runaways in Alexandria.
- Insist that all information about the case be placed into the police NCIC computer.
- Educate your children on being aware of strangers.

Having your child fingerprinted will not prevent him/her from being abducted or from running away; however, it will greatly assist the police in their investigation should this happen.

Normally, only one fingerprint card will be taken; however, on request a second will be done.

The police will attempt to fingerprint all children regardless of their age; however, there will be a few who cannot be fingerprinted, due to various reasons.



CITY OF ALEXANDRIA · VIRGINIA ·

ALEXANDRIA POLICE DEPARTMENT
YOUTH SERVICES UNIT
400 NORTH PITT STREET
ALEXANDRIA, VIRGINIA 22314
EMERGENCY: 911
NON-EMERGENCY: 838-4444
YOUTH SERVICES UNIT: 838-4733

Senator **Specter**. Detective Scutt, thank you very much for your very helpful testimony, and congratulations to you on the award you are about to receive.

Mr. **Scutt**. Thank you, Senator.

Senator **Specter**. That concludes our proceedings. The subcommittee stands in recess.

[Whereupon, at 11:30 a.m., the subcommittee was adjourned.]

APPENDIX

Public Law 96-611
96th Congress

An Act

Dec. 28, 1980
[H.R. 8406]

To amend title XVIII of the Social Security Act to provide for medicare coverage of pneumococcal vaccine and its administration.

Social Security Act, amendment.
42 USC 1395x.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a)(1) section 1861(s) of the Social Security Act is amended—

(A) by redesignating paragraphs (10) through (13) as paragraphs (11) through (14), respectively;

(B) by striking out "and" at the end of paragraph (8);

(C) by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and"; and

(D) by inserting after paragraph (9) the following paragraph: "(10) pneumococcal vaccine and its administration.".

42 USC 1395aa.

(2) Section 1864(a) of such Act is amended by striking out "paragraphs (10) and (11) of section 1861(s)" and inserting in lieu thereof "paragraphs (11) and (12) of section 1861(s)".

42 USC 1395y.

(3) Section 1862(a) of such Act is amended—

(A) by inserting ", or, in the case of items and services described in section 1861(s)(10), which are not reasonable and necessary for the prevention of illness" before the semicolon at the end of paragraph (1), and

(B) by inserting "(except as otherwise allowed under section 1861(s)(10) and paragraph (1))" in paragraph (7) after "immunizations".

42 USC 1395*l*.
Ante, pp. 2634, 2239, 2641.

(b)(1) Section 1833(a) of such Act (as amended by sections 932(a)(1)(B), 934(d), and 942 of the Medicare and Medicaid Amendments of 1980) is amended—

(A) by striking out "and" before "(G)" in paragraph (1);

(B) by inserting at the end of paragraph (1) the following: "and (H) with respect to items and services described in section 1861(s)(10), the amounts paid shall be 100 percent of the reasonable charges for such items and services,";

(C) by inserting "and to items and services described in section 1861(s)(10)" in paragraph (2)(A) after "home health services"; and

(D) by inserting "(other than for items and services described in section 1861(s)(10))" in paragraph (3) after "but in no case may the payment for such services".

(2) The first sentence of section 1833(b) of such Act is amended by inserting "(A)" in clause (2) after "expenses incurred", and by inserting before the comma at the end of such clause the following: ", or (B) for items and services described in section 1861(s)(10)".

(3) Subparagraph (A) of section 1861(aa)(1) of such Act is amended by inserting before the comma at the end the following: "and items and services described in section 1861(s)(10)".

42 USC 1395cc.

(4) Section 1866(a)(2)(A) of such Act is amended by adding at the end the following new sentence: "A provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1861(s)(10) for which payment is made under part B.".

SEC. 2. The amendments made by this Act shall take effect on, and apply to services furnished on or after, July 1, 1981.

Effective date.
42 USC 1395l note.

PAYMENTS TO STATES FOR ADOPTION ASSISTANCE AND FOSTER CARE

SEC. 3. Section 474 of the Social Security Act is amended by adding at the end the following new subsection:

42 USC 674.

"(d)(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsections (a), (b), and (c) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (c) such other investigation as the secretary may find necessary.

Estimates, State entitlement.

"(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

"(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to foster care and adoption assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.".

Pro rata share.

SEC. 4. Section 406(a)(2) of the Social Security Act is amended—

42 USC 606.

(1) by inserting "at the option of the State," after "(B)"; and

(2) by inserting before the semicolon at the end thereof the following: ", or (C) at the option of the State, under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school in grade twelve or below or regularly attending a course of vocational or technical training, other than a course provided by or through a college or university, designed to fit him for gainful employment".

SEC. 5. (a) Section 1613 of the Social Security Act is amended by adding at the end thereof the following new subsection:

42 USC 1382b.

"DISPOSAL OF RESOURCES FOR LESS THAN FAIR MARKET VALUE

"(c)(1) In determining the resources of an individual (and his eligible spouse, if any) there shall be included (but subject to the exclusions under subsection (a)) any resource (or interest therein) owned by such individual or eligible spouse within the preceding 24 months if such individual or eligible spouse gave away or sold such resource or interest at less than fair market value of such resource or interest for the purpose of establishing eligibility for benefits or assistance under this Act.

"(2) Any transaction described in paragraph (1) shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance under this Act unless such individual or eligible spouse

Eligibility benefits.

furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

Fair market value or interest.

"(3) For purposes of paragraph (1) the value of such a resource or interest shall be the fair market value of such resource or interest at the time it was sold or given away, less the amount of compensation received for such resource or interest, if any.".

42 USC 1396a.

(b) Section 1902 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(j)(1) Notwithstanding any other provision of this title, an individual who would otherwise be eligible for medical assistance under the State plan approved under this title may be denied such assistance if such individual would not be eligible for such medical assistance but for the fact that he disposed of resources for less than fair market value. If the State plan provides for the denial of such assistance by reason of such disposal of resources, the State plan shall specify a procedure for implementing such denial which, except as provided in paragraph (2), is not more restrictive than the procedure specified in section 1613(c) of this Act.

Ante, p. 3567.

Ineligibility period.

"(2) In any case where the uncompensated value of disposed of resources exceeds $12,000, the State plan may provide for a period of ineligibility which exceeds 24 months. If a State plan provides for a period of ineligibility exceeding 24 months, such plan shall provide for the period of ineligibility to bear a reasonable relationship to such uncompensated value.

Medical assistance, eligibility.

"(3) In any case where an individual is ineligible for medical assistance under the State plan solely because of the applicability to such individual of the provisions of section 1613(c), the State plan may provide for the eligibility of such individual for medical assistance under the plan if such individual would be so eligible if the State plan requirements with respect to disposal of resources applicable under paragraphs (1) and (2) of this subsection were applied in lieu of the provisions of section 1613(c).".

Effective date.
42 USC 1382b note.
42 USC 1601.

(c) The amendment made by subsection (a) shall be effective with respect to applications for benefits under title XVI of the Social Security Act filed on or after the first day of the first month which begins at least 60 days after the date of enactment of this Act.

SHORT TITLE

42 USC 1305 note.

SEC. 6. Sections 6 to 10 of this Act may be cited as the "Parental Kidnaping Prevention Act of 1980".

FINDINGS AND PURPOSES

28 USC 1738A note.

SEC. 7. (a) The Congress finds that—

(1) there is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the laws, and in the courts, of different States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(2) the laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, are often inconsistent and conflicting;

(3) those characteristics of the law and practice in such cases, along with the limits imposed by a Federal system on the authority of each such jurisdiction to conduct investigations and

take other actions outside its own boundaries, contribute to a tendency of parties involved in such disputes to frequently resort to the seizure, restraint, concealment, and interstate transportation of children, the disregard of court orders, excessive relitigation of cases, obtaining of conflicting orders by the courts of various jurisdictions, and interstate travel and communication that is so expensive and time consuming as to disrupt their occupations and commercial activities; and

(4) among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions, the deprivation of rights of liberty and property without due process of law, burdens on commerce among such jurisdictions and with foreign nations, and harm to the welfare of children and their parents and other custodians.

National system of locating parents, establishment.

(b) For those reasons it is necessary to establish a national system for locating parents and children who travel from one such jurisdiction to another and are concealed in connection with such disputes, and to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

(c) The general purposes of sections 6 to 10 of this Act are to—

(1) promote cooperation between State courts to the end that a determination of custody and visitation is rendered in the State which can best decide the case in the interest of the child;

(2) promote and expand the exchange of information and other forms of mutual assistance between States which are concerned with the same child;

(3) facilitate the enforcement of custody and visitation decrees of sister States;

(4) discourage continuing interstate controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) avoid jurisdictional competition and conflict between State courts in matters of child custody and visitation which have in the past resulted in the shifting of children from State to State with harmful effects on their well-being; and

(6) deter interstate abductions and other unilateral removals of children undertaken to obtain custody and visitation awards.

FULL FAITH AND CREDIT GIVEN TO CHILD CUSTODY DETERMINATIONS

28 USC 1731 *et seq.*

SEC. 8. (a) Chapter 115 of title 28, United States Code, is amended by adding immediately after section 1738 the following new section:

28 USC 1738A.

"§1738A. Full faith and credit given to child custody determinations

"(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State.

Definitions.

"(b) As used in this section, the term—

"(1) 'child' means a person under the age of eighteen;

"(2) 'contestant' means a person, including a parent, who claims a right to custody or visitation of a child;

"(3) 'custody determination' means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications;

"(4) 'home State' means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

"(5) 'modification' and 'modify' refer to a custody determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody determination concerning the same child, whether made by the same court or not;

"(6) 'person acting as a parent' means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

"(7) 'physical custody' means actual possession and control of a child; and

"(8) 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

"(c) A child custody determination made by a court of a State is consistent with the provisions of this section only if—

"(1) such court has jurisdiction under the law of such State; and

"(2) one of the following conditions is met:

"(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

"(B)(i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

"(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse;

"(D)(i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

"(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

"(d) The jurisdiction of a court of a State which has made a child custody determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

"(e) Before a child custody determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

"(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if—

"(1) it has jurisdiction to make such a child custody determination; and

"(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

"(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.".

28 USC 1738A note. *Ante*, p. 3569.

(b) The table of sections at the beginning of chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1738 the following new item:

"1738A. Full faith and credit given to child custody determinations.".

(c) In furtherance of the purposes of section 1738A of title 28, United States Code, as added by subsection (a) of this section, State courts are encouraged to—

(1) afford priority to proceedings for custody determinations; and

Ante, p. 3569.

(2) award to the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, necessary travel expenses, attorneys' fees, costs of private investigations, witness fees or expenses, and other expenses incurred in connection with such custody determination in any case in which—

(A) a contestant has, without the consent of the person entitled to custody or visitation pursuant to a custody determination which is consistent with the provisions of such section 1738A, (i) wrongfully removed the child from the physical custody of such person, or (ii) wrongfully retained the child after a visit or other temporary relinquishment of physical custody; or

(B) the court determines it is appropriate.

USE OF FEDERAL PARENT LOCATOR SERVICE IN CONNECTION WITH THE ENFORCEMENT OR DETERMINATION OF CHILD CUSTODY AND IN CASES OF PARENTAL KIDNAPING OF A CHILD

42 USC 654.

SEC. 9. (a) Section 454 of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (15);

(2) by striking out the period at the end of paragraph (16) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (16) the following new paragraph:

Post, p. 3572. 42 USC 653.

"(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 463 for the use of the Parent Locator Service established under section 453, to accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, and to impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, to transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect, otherwise to comply with such agreement and regulations of the Secretary with respect thereto.".

42 USC 651.

(b) Part D of title IV of the Social Security Act is amended by adding at the end thereof the following new section:

"USE OF FEDERAL PARENT LOCATOR SERVICE IN CONNECTION WITH THE ENFORCEMENT OR DETERMINATION OF CHILD CUSTODY AND IN CASES OF PARENTAL KIDNAPING OF A CHILD

42 USC 663.

"SEC. 463. (a) The Secretary shall enter into an agreement with any State which is able and willing to do so, under which the services of the Parent Locator Service established under section 453 shall be made available to such State for the purpose of determining the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

"(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

"(2) making or enforcing a child custody determination.

42 USC 654.

"(b) An agreement entered into under this section shall provide that the State agency described in section 454 will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

"(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

"(2) making or enforcing a child custody determination.

42 USC 653.

"(c) Information authorized to be provided by the Secretary under this section shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 453, and a request for information by the Secretary under this section shall be considered to be a request for information under section 453 which is authorized to be provided under such section. Only information as to the most recent address and place of employment of any absent parent or child shall be provided under this section.

Definitions.

"(d) For purposes of this section—

"(1) the term 'custody determination' means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;

"(2) the term 'authorized person' means—

"(A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody determination;

"(B) any court having jurisdiction to make or enforce such a child custody determination, or any agent of such court; and

"(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.".

(c) Section 455(a) of such Act is amended by adding after paragraph (3) the following: "except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 463.". 42 USC 655. *Ante*, p. 3572.

(d) No agreement entered into under section 463 of the Social Security Act shall become effective before the date on which section 1738A of title 28, United States Code (as added by this title) becomes effective. Effective date. 42 USC 663 note. *Ante*, p. 3569.

PARENTAL KIDNAPING

Sec. 10. (a) In view of the findings of the Congress and the purposes of sections 6 to 10 of this Act set forth in section 302, the Congress hereby expressly declares its intent that section 1073 of title 18, United States Code, apply to cases involving parental kidnaping and interstate or international flight to avoid prosecution under applicable State felony statutes. 18 USC 1073 note. 42 USC 502.

(b) The Attorney General of the United States, not later than 120 days after the date of the enactment of this section (and once every 6 months during the 3-year period following such 120-day period), shall submit a report to the Congress with respect to steps taken to comply with the intent of the Congress set forth in subsection (a). Each such report shall include—

(1) data relating to the number of applications for complaints under section 1073 of title 18, United States Code, in cases involving parental kidnaping;

(2) data relating to the number of complaints issued in such cases; and

(3) such other information as may assist in describing the activities of the Department of Justice in conformance with such intent.

TECHNICAL AMENDMENTS AND AMENDMENTS RELATING TO CHILD SUPPORT AUDITS

Sec. 11. (a)(1) Section 127(a)(1) of the Food Stamp Act Amendments of 1980 (Public Law 96-249), is amended by striking out "Subsection (i) of section 6103" and inserting in lieu thereof "Subsection (l) of section 6103". *Ante*, p. 365.

(2)(A) Section 408(a)(1) of the Social Security Disability Amendments of 1980 (Public Law 96-265), is amended by striking out (in the new paragraph added thereby to subsection (l) of section 6103 of the Internal Revenue Code of 1954) "(7) Disclosure" and inserting in lieu thereof "(8) Disclosure". *Ante*, p. 468.

(B) Section 408(a)(2) of the Social Security Disability Amendments of 1980 is amended—

(i) in subparagraph (A), by—

(I) striking out "(l)(1) or (4)(B) or (5)" and inserting in lieu thereof "(l)(1), (4)(B), (5), or (7)", and

(II) striking out "(l)(1), (4)(B), (5), or (7)" and inserting in lieu thereof "(l)(1), (4)(B), (5), (7), or (8)";

(ii) in subparagraph (B), by—

(I) striking out "(l) (3) or (6)" and inserting in lieu thereof "(l) (3), (6), or (7)", and

(II) striking out "(l) (3), (6), or (7)" and inserting in lieu thereof "(l) (3), (6), (7), or (8)";

(iii) in subparagraph (C), by—

(I) striking out "(l)(6)" and inserting in lieu thereof "(l) (6) or (7)", and

(II) striking out "(l) (6) or (7)" and inserting in lieu thereof "(l) (6), (7), or (8)"; and

26 USC 7213.

(iv) in subparagraph (D), by—

(I) striking out "subsection (d), (l)(6) or (m)(4)(B)" and inserting in lieu thereof "subsection (d), (l) (6) or (7), or (m)(4)(B)", and

(II) striking out "subsection (d), (l) (6) or (7), or (m)(4)(B)" and inserting in lieu thereof "subsection (d), (l) (6), (7), or (8), or (m)(4)(B)".

Effective date. 26 USC 6103 note.

(3) The amendment made by paragraph (1) shall take effect on May 26, 1980 and the amendments made by paragraph (2) shall take effect on June 9, 1980.

26 USC 7213.

(4)(A) The first sentence of section 7213(a)(2) of the Internal Revenue Code of 1954 (relating to unauthorized disclosure of information by State and other employees) is amended by striking out "(l) (6) or (7)" and inserting in lieu thereof "(l) (6), (7), or (8)".

Effective date. 26 USC 7213 note.

(B) The amendment made by subparagraph (A) shall take effect on December 5, 1980.

Ante, p. 532.

(b)(1) Section 309 of the Adoption Assistance and Child Welfare Act of 1980 is amended by striking out "fiscal year 1977 or fiscal year 1978 shall be made prior to October 1, 1980" and inserting in lieu thereof "any of the fiscal years 1977 through 1980 shall be made prior to October 1, 1981".

42 USC 651.

(2) The regulations pertaining to audit criteria (as set forth in 45 CFR 305.20) and the regulations pertaining to penalty for failure to have an effective child support enforcement program (as set forth in 45 CFR 305.50), under the child support program established by title IV-D of the Social Security Act, as in effect on the date of enactment of this Act, shall remain in effect until October 1, 1981.

42 USC 655.

(c) Section 455(a) of the Social Security Act is amended by striking out the semicolon at the end thereof and inserting in lieu thereof a period.

Approved December 28, 1980.

LEGISLATIVE HISTORY:

CONGRESSIONAL RECORD, Vol. 126 (1980):
Dec. 5, considered and passed House.
Dec. 13, considered and passed Senate, amended; House agreed to Senate amendments.

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30 WEST 44th STREET, NEW YORK 10036
332 PINE STREET, SAN FRANCISCO 94104
EDIFICIO LA CUMBRE, SANTO DOMINGO
CITICORP CENTER, TAIPEI

May 11, 1983

Ms. Ellen Greenberg
Office of Senator Arlen Spector
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Ms. Greenberg:

Confirming our today's telephone conversation regarding the Senate Judiciary Committee's proposed hearings on child abduction, I attach hereto a copy of my brief in the Virginia Supreme Court in the Lyons v. Lyons case, as well as a copy of the Queen's Bench court's decision of in the same matter of December 20, 1982.

The facts of this tragic case are succinctly summarized at pages 4-12 of the brief.

It would be a pleasure for me to testify at sub-committee's hearings on the subject. If called, I would briefly relate the facts of the Lyons case and urge upon the committee that it is imperative that the United States lend its support, and ratify, the 1980 Hague Convention on Child Abduction.

I am convinced that no purely domestic law reforms can remedy the chaotic conditions which prevail in the area of transnational child abduction - as the Lyons case well-exemplifies. Nor is there much hope for effective cooperation between states on the basis of international comity or courtesy, as, again, the Lyons case demonstrates. If American left-behind parents cannot get effective judicial assistance from a sister-common law jurisdiction, like the United Kingdon, there is no hope for much help from courts in civil law jurisdiction - unless the states involved assume a formal treaty obligation.

Please let me know if I can be of any assistance to the committee or to you. At the minimum, I would hope that you would be able to make the attachments hereto part of the record of the hearings.

With all good wishes.

Sincerely yours,

Bruno J. Ristau

Bruno A. Ristau

Enclosures

BAR/lll

IN THE SUPREME COURT OF VIRGINIA

HERBERT LEE LYONS :
Appellant, :
:
vs. : RECORD NO. ________
:
MARGARET VERITY FLOWER LYONS :
Appellee. :

PETITION FOR APPEAL

TO THE HONORABLE CHIEF JUSTICE AND THE ASOCIATE
JUSTICES OF THE SUPREME COURT OF VIRGINIA:

Appellant, Herbert Lee Lyons, respectfully represents to this Honorable Court that he is aggrieved by an Order entered by the Circuit Court of Fairfax County (Millsap, J.) on September 23, 1982, declining to exercise jurisdiction in a child custody case.

STATEMENT OF MATERIAL PROCEEDINGS

On April 30, 1982, the appellant, Herbert Lee Lyons ("husband"), filed suit in the Circuit Court of Fairfax County ("Circuit Court") against the appellee, Margaret Verity Flower Lyons ("wife"), for custody of the parties' minor son whom the wife had abducted to England, and for divorce. The wife appeared and filed an Answer together with a Cross-Bill for divorce and for custody of the minor son. Upon the husband's application, the Circuit Court appointed a Commissioner in Chancery to hear the matrimonial dispute, but declined to issue a mandatory injunction requiring the wife to return the child to the jurisdiction of the Circuit Court either at once, or to appear with the child at the hearing of the custody cause. Finding that the limited question of the child's return to Virginia had been heard earlier in England and resolved adversely to the husband, the Circuit Court held that this Court's decision in Oehl v. Oehl, 272 Va. 618, 272 S.E.2d 441 (1980), mandated that it decline to issue the return order and, further, that it defer to the jurisdiction of the English courts to determine custody at some future time. The court's ruling was incorporated in an Order entered on September 23, 1982-- the subject of the present appeal.

On October 6, 1982, this Court denied the husband's petition for an injunction on the grounds that the Circuit Court's order was a "final order" within the contemplation of Code § 8.01-670; the Court indicated that the husband should seek relief through the normal appellate procedure.

ASSIGNMENTS OF ERROR

1. The Circuit Court erred in declining to exercise jurisdiction in a custody dispute involving a minor whose home state is Virginia, and who has been abducted by the mother from his home state and taken to a foreign country.

2. The Circuit Court erred in deferring to the jurisdiction of the courts in England to hear the custody dispute in the future.

3. The Circuit Court erred in misapplying and misconstruing this Court's decision in Oehl v. Oehl, 272 Va. 618, 272 S.E.2d 441 (1980).

QUESTIONS PRESENTED

1. Whether the Circuit Court may, consistent with the jurisdictional mandate of the Uniform Child Custody Jurisdiction Act, Code § 20-125 et seq., decline to hear a child custody case under circumstances where (1) the child was born, raised and lived all his life in this State, and Virginia is thus the "home State" of the child within the purview of Code § 20-126(A)(1),

and (2) where significant evidence concerning the child's care, protection, training, and personal relationships is most readily available in this State within the meaning of Code § 20-126(A)(2). (Assignment of Error #1).

2. Whether the Circuit Court may, consistent with the Uniform Child Custody Jurisdiction Act, supra, relinquish jurisdiction in a child custody matter and defer to the jurisdiction of an English court, where the English court exercises jurisdiction solely on the basis of the child's physical presence in England for one day following the child's abduction from Virginia. (Assignment of Error #2).

3. Whether as a matter of international comity the Circuit Court must defer to the jurisdiction of an English court in a child custody matter where the English court has not adjudicated the custody dispute and there merely exists the potential of such adjudication in the future, and where the parties seeking custody have submitted to the jurisdiction of the Circuit Court and the cause is ripe for adjudication in this State. (Assignment of Error #3).

STATEMENT OF FACTS

On April 12, 1982, the appellant's wife left by stealth the marital home of the parties in Fairfax County, Virginia, and took with her--and concealed from the husband for some six weeks--the parties' only child, Herbert Gavin Lyons, now aged 7. The child was born and raised in Virginia, and at the time of his abduction he was attending school in Fairfax County.

On April 30, 1982, the husband filed suit in the Circuit Court for custody of his minor son and for a divorce a mensa et thoro from his wife on grounds of wilful desertion and abandonment. (R. 1). 1/ The husband learned only on May 20,

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1/ The reference "R." is to the record compiled by the Clerk of the Circuit Court in conformity with Rule 5.14 of the Rules of this Court.

1982, that his son had been taken by the wife to Oxford, England. On that date, the husband was served with an "originating summons" filed by the wife on April 14, 1982--one day after she and the child arrived in England--in the High Court of Justice, Family Division, Oxford District Registry, England ("High Court"), seeking to have the child declared a ward of the court. (R. 41). Appended to the summons was a one-sentence ex parte order issued the same day by the High Court, declaring the child a temporary ward of the English court. (R. 48). The wardship order, subsequently extended on April 27, 1982, was based on an affidavit of the wife's English counsel attesting to the wife's "extreme concern" that her husband "would make an attempt to kidnap his son and to take him back to America with him." (R. 45). Nothing in the summons, in the supporting affidavit, or in the wardship order itself indicated that the wife sought--or would seek--a decree awarding her custody of the child in England.

The husband immediately retained counsel in England and applied to the High Court to quash the ex parte wardship order and to order the return of the minor son to his home in this Commonwealth. The application was heard in London on June 25 and 28, 1982, following which the High Court issued an order which provided in relevant part that (R. 59)--

> 1. The Plaintiff/Wife do return the minor Herbert Gavin Lyons to 1101 Gladstone Place, Alexandria, Virginia, U.S.A., not later than Friday the 9 of July 1982.
>
> 2. The minor Herbert Gavin Lyons do cease to be a Ward of Court on the 30 September 1982 unless meantime the wardship is extended or discharged upon the application of either party on notice.

In its accompanying opinion 2/, the High Court made it clear that no custody proceeding was then pending in England, and that the sole issue before the Court was whether the temporary

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2/ The full opinion of the High Court, styled Lyons v. Lyons, High Ct. Justice, Fam. Div., Judgment of June 28, 1982, is reproduced at R. 87-95.

wardship order should be quashed and the minor ordered returned to this Commonwealth. Said the Court:

> The evidence so far as it goes is sketchy and nothing like sufficient for any court to decide custody or care and control, and it is not necessary that in these proceedings there should be the material on which the court could carry out an investigation in depth as to who should have the custody, care and control of Gavin. On this particular application, which is to return Gavin to the American jurisdiction, the husband's case is that Gavin is an American boy. . . . If Gavin stays here there will in due course be proceedings for the custody, care and control of the High Court pursuant to the wardship proceedings, but until those proceedings are heard it is difficult to see how his father could have access to him, and difficult to see how the American witnesses would effectively be heard.

Judgment of Ranking, J., of June 28, 1982, R. 90-91.

The High Court determined that because most of the evidence relevant to a custody determination was located in the United States, the courts of this country were the proper courts to hear and decide the matter:

> As to the American factor, I attach very considerable importance to that, because Gavin is an American boy. His background is American. His heritage is American, and my view is that the proper Court to decide his future should be the American Court. That is where he spent his life, that is where he was born; and as I say again he is an American boy. Most of the witnesses, except for the wife's mother and father who are in England, are persons who reside in the United States, and I appreciate that if the hearing were here it would be very difficult to get all the witnesses here. Mere affidavits are not always all that satisfactory. So for that reason alone it seems to me that the United States is the right place for this matter to be tried.

Judgment of Ranking, J., of June 28, 1982, R. 92-93.

On July 2, 1982, the Wife appealed the return order to the Court of Appeal. (R. 61). The appeal was heard on July 6, 1982, and the same day the Court of Appeal issued an order "discharging" the return order entered a week earlier by the lower court. The order provided in relevant part that (R. 103)--

> 3. The child Herbert Gavin Lyons do remain in the interim care and control of the Plaintiff Margaret Verity Lyons until further order with

> reasonable access to the Defendant Herbert Lee Lyons.
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> 4. There be a fresh hearing of the summons to be heard as early as possible upon application to the Clerk of the Rules. . . .

The accompanying opinion of the Court of Appeal 3/ explained that in its view the lower court had placed undue emphasis on the forum conveniens, and had paid too little attention to the interests of the child, the mother, and what the Court termed the "reality of the situation." The Court of Appeal thought that the question of custody could be disposed of in England within a matter of weeks, with a minimum of additional evidence, and in consequence a further short stay by the minor in England would not prejudice the position of either parent. Lord Justice Ormrod, speaking for the Court of Appeal, said in part:

> All we are dealing with at the moment is a short-term issue. I know the apprehension of counsel that, once this court gets hold of it, then the child will inevitably spend the rest of his young life in England. It may be that that is going to be the answer, but we do not know that; we are not deciding that at this stage. One thing that is surely clear is that, when this matter is heard on its merits, one of the factors which will be uppermost in the mind of the judge dealing with it, is, is this child in the future going to grow up as an American child with an English mother, or as an English child with an American father? By not making a peremptory order, I do not think that that decision will in any way be prejudiced. It would be lamentable if a short delay, a matter of six weeks or two months, whatever it is, should be used as an argument for saying that the child should stay here. That is a very primitive form of argument and not one to which much weight should be given, in my view. At the most, this child will be spending six months in England which, at the age of 7, is not very long. I do not, for my part, take at all seriously the suggestion that, if the matter comes to be dealt with in this court, the ultimate decision as to this child's future will be prejudiced one way or the other. It would be lamentable if it were so. . . .

Judgment of Ormond, L.J., of July 6, 1982, R. 111.

In the Court's view, the best interests of the child were

3/ The full opinion of the Court of Appeal, Re "L" (Minor), ___ All. E.R. ____, (1982 L 161), is reproduced at R. 104-115.

not alone dispositive of the issue presented in the case; the interests of the abducting mother also required protection. The Lord Justice stated:

> I know quite well that that is an extremely irritating situation. It appears that the mother can manipulate the situation simply by flatly refusing [to return to America]. But one has to be a little more realistic than that. What her prospects are, if she goes back to the United States and conducts the litigation there, is far from clear to me. There is no indication of how she would be legally represented in what may be an expensive and long-drawn out battle. Her position may be exceedingly difficult when she gets there and I do not think that it is merely a forensic manoeuvre by her to decide that she will not go back in any circumstances. I think that what she is saying is the realistic statement that her marriage having completely broken down, having no roots and no connections in the United States, her obvious course is to return to her family in England, and that is the reality of the situation. To my mind this case, like all these cases, needs to be faced in terms of the reality of the situation and not in any other fashion. . . .
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> For those reasons, I would discharge the learned judge's order and, simply for the sake of completion, make an interim care and control order in favour of the mother and direct that the substantive issue in this case be tried at the earliest possible moment in London, certainly during the vacation if possible, and, if the father intends to fight it, the evidence should be kept to the minimum that is required for the purpose of making a decision as to whether or not the boy should spend the next few years here with his mother, or in the United States with his father. . . .

Judgment of Ormond, L.J., of July 6, 1982, R. 112-113.

As of the date of this petition, no additional proceedings have taken place before the High Court. Despite the Court of Appeal's order granting the husband "reasonable access" to his son (R. 103), the wife is permitting the husband telephone access only once a month.

As noted earlier, before these developments occurred in England, the husband filed in the Fairfax Circuit Court a Bill of Complaint on April 30, 1982, seeking a Decree awarding him custody of the parties' minor son and granting him a divorce.

(R. 1). Attached to the Bill of Complaint was an affidavit, as required by Code § 20-132, stating that the whereabouts of the minor son was then unknown to the husband, and that no other litigation concerning the custody of the son was then pending in the courts of this Commonwealth or in any other state. (R. 4).

Initially, leave of court was obtained to serve the wife by publication. (R. 7). Thereafter, when the wife's presence in England became known as a result of the service of her English originating summons here, the husband caused personal service to be made on her in England under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, of November 16, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638, and such service was effected about June 7, 1982. (R. 8).

On June 29, 1982, the wife made a general appearance in the Circuit Court and filed an Answer to the husband's Bill of Complaint together with a Cross-Bill for divorce, alimony, custody of the parties' son and for other relief. (R. 12). The wife did not signify to the Circuit Court that litigation concerning the custody of the parties' son was then pending in any other court.

On July 23, 1982, the Circuit Court entered a Decree of Reference appointing a Commissioner in Chancery to take evidence in the matrimonial cause. (R. 23). Also on July 23, the Circuit Court heard argument on the husband's motion for a mandatory injunction compelling the wife to return the child to this Commonwealth pending adjudication of the custody dispute. At oral argument, the Circuit Court was advised of the wardship proceeding in England. The court took the matter under advisement and requested that the relevant documents pertaining to the proceeding in England be made of record in this cause.

After the English documents were obtained and produced in court, the husband promptly renewed his motion for an Order compelling the return of the minor child to this Commonwealth. (R. 23). Simultaneously, the husband moved for an Order requiring the wife to permit the husband telephone access to his son in England, which the wife had consistently refused. (R. 25).

On August 30, 1982, following a further hearing on the husband's renewed motions for a return order and to compel telephone visitation, the Circuit Court ruled that it would order the wife to allow the husband telephonic access to his son in England twice weekly, since the wife was personally before the court 5/; but the Circuit Court declined to issue a mandatory injunction ordering the wife to return the minor son to Virginia. (Transcript of Proceedings of August 30, 1982, pp. 3-6.) The court's ruling was incorporated in an Order entered on September 23, 1982, which Order is the subject of the present petition. (R. 116).

In declining to issue a mandatory injunction for the return of the child, the Circuit Court deemed itself bound by the decision of this Court in *Oehl* v. *Oehl*, 272 Va. 618, 272 S.E.2d 441 (1980), and it ruled further that under the principles established in that case "the question of custody lies in the English court." (R. 117).

In colloquy with counsel, the court indicated that its Order was not limited to the return of the child then, but that the Order had the effect of relinquishing complete jurisdiction in the custody matter in favor of the English courts. (Transcript of Proceedings of August 30, 1982, pp. 6-7).

The Circuit Court's Order of September 23, 1982, reads in relevant part as follows (R. 117):

> IT FURTHER APPEARING TO THE COURT that the Order of the English Court of Appeal meets the three-pronged test established by the Virginia Supreme Court in the *Oehl* case, specifically, that the English Court had jurisdiction over the parties and the subject matter; that the procedural and substantive

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5/ As noted earlier, *supra*, p. 9, despite the Circuit Court's visitation order, the wife is permitting the husband telephone access to his son only once a month.

> law applied by the English Court was reasonably comparable to that of Virginia; and, that in awarding interim care and custody of the minor child to Margaret Lyons the English Court would not have made such an Order without considering that it was in the best interests of the child to remain, until further Order of the Court, under the care and control of the Plaintiff, the mother; and
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> IT FURTHER APPEARING TO THE COURT that this Court has to give full faith and credit and comity to the English Order; . . . .
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> * * * * *
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> ADJUDGED, ORDERED AND DECREED that this Court will grant comity to the Order of July 6, 1982, entered by the Supreme Court of Judicature, Court of Appeal, England and, as the question of custody lies in the English Court, this Court will deny the Motion of the Complainant/Cross-Defendant for an affirmative ruling directing the return of the minor child to this jurisdiction; . . . . [Emphasis added.]

ARGUMENT

Introduction.

Effective January 1, 1980, the General Assembly enacted into law the Uniform Child Custody Jurisdiction Act ("UCCJA"), Code §§ 20-125 to -146, which radically changed prior custody jurisdiction law--so far as relevant here--in two major ways: (1) the UCCJA eliminates physical presence of the child as a jurisdictional basis in all but the most extreme emergency cases, and (2) it establishes specific and limiting jurisdictional bases for initial decrees.

Prior to the enactment of the UCCJA, it was established law in this Commonwealth and elsewhere in this country that mere physical presence of the child within the forum State constituted a sufficient basis for the exercise of jurisdiction over the child for custody purposes. Falco v. Grills, 209 Va. 115, 161 S.E.2d 713 (1968). Not only did this type of jurisdiction condone parental kidnapping, but it encouraged child abduction as a means of forum shopping; relitigation of custody decrees in what was perceived to be a more favorable forum; and it made it possible for the abducting parent to "get even" with the left-behind parent, using the abducted child as a pawn.

Section 1 of the UCCJA 5/ makes it now clear beyond peradventure that the purpose of the Act is to outlaw mere presence of a child in the forum state as a jurisdictional basis in custody matters, and that custody is to be determined exclusively in the State with which the child has the closest contacts.

This Court has not had occasion to consider the jurisdictional implications of the UCCJA 6/ in relation to custody disputes involving foreign states. 7/ This petition squarely presents to this Court the international application of the UCCJA; it raises directly the question whether the courts of this Commonwealth may deny to a resident left-behind parent access to court when his child has been abducted to a foreign state. But underlying this question is a more fundamental issue which concerns the administration of justice: will the courts of this Commonwealth be guided by the spirit of the UCCJA and use their authority to the utmost to put an end to the intolerable practice of child abduction, or will the courts stand by idly when a local child is kidnapped across international borders?

5/ Section 1 of the Act, setting forth the purposes of the Act, has not been enacted into law in Virginia. See Uniform Child Custody Jurisdiction Act, Commissioners' Prefatory Note, 9 Uniform Laws Ann. 111, 112 (1979). This follows traditional Virginia practice not to enact the "purpose" provisions of Uniform Acts into positive law.

6/ In *Oehl v. Oehl*, discussed *infra*, pp. 25-28, this Court noted in passing that, while the appeal there was pending, the UCCJA had come into force in this State. 221 Va. at 625, fn., 272 S.E.2d at 445, fn. The decision in that case, however, did not draw into issue any of the jurisdictional provisions of the Act.

7/ Section 23 of the UCCJA, Code § 20-146, reads as follows:

> *International Application*.--The general policies of this Act extend to the international area. The provisions of this Act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

It is worthy of note that the appalling increase in parental child abductions, both within this country and across international borders, has lead the Federal Government and the international community to take a variety of steps to reverse that trend and to put an end to these abductions. At the Federal level, the Congress recently enacted the so-called "Parental Kidnapping Prevention Act of 1980," 94 Stat. 3568 (codified in various chapters of Titles 18, 28 and 42 of the United States Code); in broad terms, the Act requires the States, as a matter of Federal law, to give full faith and credit to child custody determinations of sister-States, 28 U.S.C. § 1738A, makes the Federal Parent Locator Service available in parental kidnapping cases, 42 U.S.C. § 654 *et seq.*, and declares that interstate or international flight of parental kidnappers to avoid prosecution under State felony statutes is to be regarded as a Federal felony within the purview of 18 U.S.C. § 1073.

At the international level, the United States participated in 1980 at the Fourteenth Session of the Hague Conference on Private International Law, which drafted the "Convention on the Civil Aspects of International Child Abduction," *reprinted in* 19 Int. Legal Materials 1501 (1980). The principal objects of the Convention, as stated in Article 1, are--

> (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
>
> (b) to ensure that rights of custody and access under the law of one Contracting State are effectively respected in the other Contracting States.

The Convention is modelled to some degree on our Uniform Child Custody Jurisdiction Act, and mandates the return of a kidnapped child to his home state for purposes of custody adjudication. Although the Convention has not yet come into force, it evidences the emergence of new international law in this area. *See Bergman* v. *DeSieyes*, 71 F.Supp. 334, 341 (S.D.N.Y. 1946), *aff'd*, 170 F.2d 360, 362 (2d Cir. 1948).

I. THE UNIFORM CHILD CUSTODY JURISDICTION ACT REQUIRES THE CIRCUIT COURT TO EXERCISE JURISDICTION IN THE PRESENT CHILD CUSTODY MATTER.

A. Since the Abducted Child was Born and Lived all his Life in this State, Virginia is the "Home State" of the Child, and Jurisdiction Regarding the Child's Custody is Vested Exclusively in this State.

The first and foremost basis for the exercise of jurisdiction under the UCCJA requires Virginia to be the "home state" of the child, section 3(a)(1)(i), Code § 20-126(A)(1)(i) 8/; that is, the State where the child has lived on a continuous basis for the six months before commencement of the proceeding. A six-month extension of this original home state jurisdiction is provided when the child is taken from Virginia by a person claiming custody. Section 3(a)(1)(ii), Code § 20-126(A)(1)(ii).

It is undisputed in this case that Virginia was the child's home state within the meaning of the UCCJA at the time the father instituted the present action on April 30, 1982. The child was born and raised in this State; except for three brief visits with his maternal grandparents in England in years past, the child lived exclusively in this State; and the child was attending the first grade of a public elementary school in this State when his mother removed him in mid-term from his school and took him to England without the father's knowledge.

There can be no doubt that if the mother had taken the child under the circumstances here to another State of the American Union 9/,

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8/ The term "home state" is defined in section 2(5) of the UCCJA, Code § 20-145(5), as "the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned."

9/ The UCCJA has now been enacted in all jurisdictions with the exception of the District of Columbia, Guam, Massachusetts, Puerto Rico and Texas. See, P. Hoff, J. Schulman, A. Volnenik and J. O'Daniel, Interstate Child Custody Disputes and Parental Kidnapping, Appendix III (A.B.A. Project, 1982).

no other American court would have assumed custody jurisdiction in this matter, but would have deferred to the courts of this State.

The cases interpreting the UCCJA are by now legion which teach that if an abducting parent files for custody in the refuge state, the UCCJA operates to preclude the exercise of jurisdiction by the refuge state while vesting exclusive jurisdiction in the child's former home state. *See In re Holman*, 396 N.E.2d 331 (Ill. App. Ct. 1979) (Illinois denied jurisdiction to mother who secretly removed children from Texas home); *Ben-Yehoshua* v. *Ben-Yehoshua*, 91 Cal. App.3d 259 (1980) (California lacked jurisdiction in action instituted by mother while she and the children were visiting grandparents); *DePasse* v. *DePasse*, 421 N.Y.S.2d 497 (App. Div. 1979) (New York lacked jurisdiction where mother had unilaterally removed children from home state of Maryland and the father had commenced proceedings two days after removal); *Bacon* v. *Bacon*, 293 N.W.2d 819 (Mich. Ct. App. 1980) (Michigan lacked jurisdiction where father had removed child from California while proceedings were pending, despite the fact that child was attending school in Michigan and had relatives there); *Paltrow* v. *Paltrow*, 376 A.2d 1134 (Md. Ct. Spec. App. 1977) (Maryland lacked jurisdiction where children were removed from family home in Oregon and proceedings were pending in Oregon; children had been living in Maryland for six months and two days when Maryland action filed.) *See also Inn* v. *Inn*, 404 N.Y.S.2d 511 (Fam. Ct. 1978); *Agnello* v. *Becker*, 42 Conn. 51 (1981).

Under the UCCJA, the left-behind parent does not have to follow the abducting parent and file for custody in the refuge state. Nor must the child be located before the left-behind parent can file a custody action in her or his, and the child's former, home state. The UCCJA applies even when the whereabouts of the child and abducting parent are unknown. UCCJA sections 3(b) and (c), Code § 20-126(B) and (C), eliminate physical presence of the child as a prerequisite of jurisdiction.

Further, in most states, including Virginia, UCCJA section 5(a)(4), Code § 20-128(A)(3), permits service by publication, thereby permitting courts to issue orders even when the abducting parent cannot be located and served.

Most important, section 3(a)(1)(ii) of the UCCJA, Code § 20-126(A)(1)(ii), provides protection for the left-behind parent by extending the "home state" period for an additional six months when the child has been removed from or retained outside the home state. As the Commissioners' Note to section 3 explains (9 Uniform Laws Ann. 123 (1979), this provision--

> extends the home state rule for an additional six-month period in order to permit suit in the home state after the child's departure. *The main objective is to protect a parent who had been left by his spouse taking the child along*. The provision makes clear that the stay-at-home parent, if he acts promptly, may start proceedings in his own state if he desires, without the necessity of attempting to base jurisdiction on paragraph (2). This changes the law in those states which required presence of the child as a condition for jurisdiction and consequently forced the person left behind to follow the departed person to another state, perhaps to several states in succession. [Emphasis added.]

Thus, by filing for custody immediately, and prior to locating the child and the abducting parent, the left-behind parent preserves his state's "home state" jurisdiction. *See e.g.*, *Paltrow* v. *Paltrow*, 376 A.2d 1134 (Md. Ct. Spec. App. 1977) (Oregon retains "home state" status even though children had been living in Maryland for six months and two days when Maryland action commenced). A state's "home state" status is determined with respect to the date of the "commencement" of the proceeding (sections 2(5) and 3(a)(1) of the UCCJA, Code §§ 20-125(5) and 20-126(A)(1)), that is, at the time of *filing* of the action. *Lopez* v. *District Court*, 606 P.2d 853 (Colo. 1980).

In addition, by filing promptly, the left-behind parent blocks the refuge state's acquisition of "home state" jurisdiction. While the abducting parent may be able to acquire "significant connections" jurisdiction in the refuge state if the abducted child is kept there long enough, once the left-behind parent's custody proceeding is *pending* in the "home state," section 6 of the UCCJA, Code § 20-129, will--as between the states of the American Union--prohibit the refuge state from exercising jurisdiction. *See Paltrow* v. *Paltrow*, *supra*; *Bacon* v. *Bacon*, *supra*; *DePasse* v. *DePasse*, *supra*.

It is the philosophy of the UCCJA that by obtaining a custody order, the left-behind parent blocks the abducting parent's ability to litigate custody in the refuge state. As between sister-States, the left-behind parent's order becomes entitled to recognition and enforcement in the refuge state under UCCJA sections 13 and 15, Code §§ 20-136 and -138. *See Grubs* v. *Ross*, 630 P.2d 353 (Or. 1981) (left behind parent's Montana order enforced in Oregon, despite the abducting parent's retention of the child in Oregon for almost 2 years); *Kraft* v. *District Court*, 593 P.2d 321 (Neb. 1979) (Nebraska order, obtained after mother's removal of children, held entitled to recognition and enforcement by Colorado court); *and see* the Parental Kidnapping Prevention Act of 1980, 28 U.S.C. § 1738A.

We, therefore, submit that the Circuit Court erred when it declined to exercise jurisdiction in this custody cause. Virginia is clearly the abducted child's "home state," and custody jurisdiction lies exclusively in this Commonwealth.

B. In the Alternative, the Courts of this State have Exclusive Jurisdiction because of the "Significant Connection" between the Child and this State.

As an alternative to "home state" jurisdiction, or when no "home state" exists, section 3(a)(2) of the UCCJA, Code § 20-126(A)(2), vests jurisdiction in a State if--

> it is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationship; . . .

The Commissioners' comment to section 3 explains the purpose and application of this "significant connection" jurisdictional base as follows (9 Uniform Laws Ann. 123-24 (1979)):

> Paragraph (2) comes into play either when the home state test cannot be met or as an alternative to that test . . . .
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> Paragraph (2) of subsection (a) is supplemented by subsection (b) which is designed to discourage unilateral removal of children to other states and to guard generally against too liberal an interpretation of paragraph (2). Short-term presence in the state is not enough even though there may be intent to stay longer, perhaps an intent to establish a technical "domicile" for divorce or other purposes.
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> *Paragraph (2) perhaps more than any other provision of the Act requires that it be interpreted in the spirit of the legislative purposes expressed in section 1 . . . its purpose is to limit jurisdiction rather than to proliferate it.* The first clause of the paragraph is important: jurisdiction exists only if it is in the child's interest, not merely the interest or convenience of the feuding parties, to determine custody in a particular state. *The interest of the child is served when the forum has optimum access to relevant evidence about the child and family. There must be maximum rather than minimum contact with the state.* The submission of the parties to a forum, perhaps for purpose of divorce, is not sufficient without additional factors establishing closer ties with the state. [Emphasis added.]

It is, we submit, patent that at the time the father instituted the instant custody proceeding--less than three weeks after the child was removed from Virginia--there not only existed a "significant connection" between the child and this State, but all probative evidence concerning the child's care, protection, training, and personal relationship was available solely in this State. We repeat, the child was a life-long resident of this State, and had had no contact with any other jurisdiction, domestic or foreign. In consequence, the Circuit Court erred in relinquishing its jurisdiction in this custody cause in favor of the English court which demonstrably had no "significant connection" with the child within the meaning of the UCCJA. 10/

II. THE UNIFORM CHILD CUSTODY ACT PRECLUDES THE COURTS OF THIS STATE FROM RELINQUISHING THEIR CUSTODY JURISDICTION IN FAVOR OF A FOREIGN TRIBUNAL WHICH PURPORTS TO EXERCISE SIMULTANEOUS JURISDICTION ON A BASIS WHICH IS OUTLAWED UNDER THE UNIFORM ACT.

As discussed earlier, one of the major changes the UCCJA made in prior custody law was the elimination of jurisdiction based on mere "physical presence" of the child within the state. Section 3(b) and (c), Code §20-126(B) and (C), accomplished this by way of a two-pronged approach.

First, Section 3(b) expressly forbids the vesting of jurisdiction in a court on the basis of physical presence alone: "(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination" (emphasis added). Section 3(b), in effect ties the hands of the court. Thus, an abducting parent, or any parent, cannot acquire jurisdiction in a forum merely by claiming physical possession of the child within the state.

Second, section 3(c) expressly provides that "[p]hysical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody" (emphasis added). Therefore, a court is not deprived or divested of its jurisdiction under one of the other specified bases in section 3

10/ It bears emphasis that it would be destructive of the policy of the UCCJA if an abducting parent could rely on evidence of the child's care and personal relationship in a refuge state (here, England) following the child's kidnapping to that state. Such a holding would eviscerate the provision of section 3(a)(2) of the Act, Code §20-126(A)(2), and encourage a kidnapping parent to retain the kidnapped child in a refuge state as long as possible in an endeavor to establish a "significant connection" with the refuge state. See Grubs v. Ross, supra, 630 P.2d 353.

by removal of the child from the jurisdiction. *An abducting parent cannot oust the court of jurisdiction by removing the child from the state.*

It is, therefore, clear that mere physical presence of a child is now a wholly insufficient basis for the exercise of custody jurisdiction, and a proceeding in a foreign state which is bottomed on such a jurisdictional basis is entitled to no recognition in the courts of this State.

A review of the record of the English proceedings here makes it manifest that jurisdiction for the proceedings in England was predicated solely on the child's presence in that country. The record shows that the wife left the parties' marital abode in Alexandria on April 12, 1982, taking the child with her; she arrived in England on April 13; she applied to the High Court on April 14 for a wardship order, and such an order was entered *ex parte* the same day. (R. 48). As we have noted repeatedly, the child had no other conceivable connection with England.

We, therefore, submit that the Circuit Court erred in relinquishing its jurisdiction and deferring to the proceeding in the English court. The English court is *not* "exercising [custody] jurisdiction substantially in conformity with the [UCCJA]" within the purview of section 6(a) of the Uniform Act, Code §20-129(A), and the proceeding in that country is--in the eyes of the now-governing law in this State--a nullity.

III. THE ENGLISH COURT OF APPEAL'S ORDER FORECLOSING THE RETURN OF THE CHILD TO THE UNITED STATES PENDING FURTHER PROCEEDINGS IN ENGLAND DOES NOT FORECLOSE A CUSTODY ADJUDICATION IN THIS STATE UNDER THIS COURT'S DECISION IN *OEHL* V. *OEHL*.

The court below ruled that this Court's decision in *Oehl* v. *Oehl*, 221 Va. 618, S.E.2d 441 (1980), mandates that in situations, as here, the courts of this Commonwealth give "full faith and comity" to the foreign proceedings. An analysis of the facts in the *Oehl* case demonstrates that its rationale is wholly inapposite here.

In Oehl, this Court held that a Circuit Court's disregard of an English court's order limiting a father's rights of visitation with his children in England only, and ordering the wife in England to grant the father visitation rights in the United States on pain of forfeiting support and alimony payments, was erroneous. The case concerned an English couple, married in England, and their two English-born children. The wife obtained in England a custody order (granting to the husband certain visitation rights) and an order requiring the husband to make monthly spousal and child support payments. The husband, who left his family in England, came to Virginia and obtained a divorce here. Some three years later, the wife applied to the English court for "directions" regarding the husband's visitation rights. Following an extensive evidentiary hearing in which the husband participated, the English court found that the welfare of the children would be adversely affected if they were required to visit their father in America, who by then was a stranger to them; the court declared the children wards of the court and provided that the husband could visit with them only in England, under the supervision of an acceptable person.

In disregard of the English court's order, the Circuit Court granted to the husband "rights of visitation in the United States" and decreed that if the wife disobeyed, the spousal and child support payments previously granted to the wife would be suspended.

In reversing that order, this Court stated [illegible] Va. at [illegible], [illegible] S.E.2d at [illegible]:

> [W]e believe that the courts of this Commonwealth, when required to determine whether comity should be granted to a child custody order entered by a foreign nation, should conduct a three-fold inquiry:
>
> (1) Did the foreign court have jurisdiction over the parties and the subject matter?
>
> (2) Was the procedural and substantive law applied by the foreign court reasonably comparable to that of Virginia?, and

> (3) Was the foreign order based upon a determination of the best interests of the child? [Emphasis added.]

This Court went on to hold that "When Virginia courts find affirmative answers to all three questions, they should grant comity to the foreign order unless, since the time it was entered, a change in conditions justifies modification in the interest of the child." 221 Va. at 623, 272 S.E.2d at 444. Finding that the English court's order limiting the non-custodial parent's visitation rights were subordinate to the welfare of the children, this Court ruled that the Circuit Court erred in refusing to grant comity to the English court's order, and in ordering suspension of support payments as a sanction.

Unlike in Dahl, there is no determination here by an English court regarding the custody of petitioner's minor son.

Unlike in Dahl, where England was the children's "home state," the child here has no connection with England other than being physically present in that country as a result of his having been kidnapped.

Unlike in Dahl, the husband here has not voluntarily invoked the custody jurisdiction of the English court; he was forced into the English court to regain possession of his minor son who had been made a temporary ward of an English court without notice to the latter and opportunity to be heard.

Most importantly, as shown earlier, under the jurisdictional standards of the UCCJA, the court below is the only proper forum to determine the custody issue, and both parties have submitted that issue for adjudication by the court below. The fact that the High Court--having been ordered by the Court of Appeal not to return the child to this State--may have to hear the custody issue in the future does not require the Circuit Court to relinquish its jurisdiction and defer to the English court. Oehl v. Oehl does not mandate such an irrational result. 11/

In consequence, we submit that the Circuit Court erred in its reading of this Court's decision in Oehl v. Oehl, and in relinquishing its custody jurisdiction in favor of the English court.

CONCLUSION

For the foregoing reasons, appellant respectfully prays that this Court grant the instant petition and review the Order of the Circuit Court of September 23, 1982, which improperly barred the adjudication of the custody dispute in this Commonwealth.

Appellant further prays that, should this Court consider the instant Petition with favor and award the appeal, the appeal be given preference to other cases in conformity with Rule 5:32 of the Rules of this Court, inasmuch as the passage of time is crucial to the jurisdictional issue. Thus, if this Court were to reverse and remand this matter to the lower court for further proceedings only after the normal appellate procedure has run its course, the jurisdictional issue presented is likely to become moot since the foreign refuge state may acquire "home state" or "significant connection" jurisdiction over the abducted child by reason of the child's prolonged presence in that state.

Respectfully submitted,

[illegible],
Appellant

Of Counsel:

[illegible]
[illegible]
[illegible]
Washington, D.C. [illegible]

By: [illegible]
[illegible] North Fairfax Street
Alexandria, Virginia [illegible]
Counsel for Appellant.

11/ It was only following the English Court of Appeal's reversal of the High Court's return order on July 6, 1982, that the wife took the position in the court below that she wished to have the custody issue determined in England. Two points bear noting here: first, the wife did not withdraw her cross-bill of complaint seeking a custody determination below, hence the record belies her belated contention that she seeks a custody determination exclusively in England; second, despite the Court of Appeal's ruling on July 6, 1982, the proceedings in England have remained suspended: at the time the Circuit Court issued its order under challenge here--some 2-1/2 months later--no steps had been taken by the wife to get the custody proceedings moving in England. The conclusion is inescapable that the wife seeks to delay any proceedings in England to the utmost, so that the child may acquire a new "home state" in England.

Senator Specter
Subcommittee on Juvenile Justice
United States Senate
Washington D.C. 20510

STATEMENT

Child abduction is an insidious social problem which has reached an epidemic proportion (it is estimated, by the Child Find, Inc., that about 100,000 cases occur every year). Which means that 100,000 children and 100,000 parents are victimised every year and live in agony of searching for the loved one without any hope for a recourse.

The PL #96-611 (Parental Kidnaping Prevention Act) does not deter parental kidnapings because not all states have a parental kidnaping statute, and many states prosecutors in those states which do have a state felony statute often willfully neglect their duty in prosecution of a parent-abductor.

Child abduction in most cases raises complicated questions of interstate jurisdiction, which often makes child recovery impossible, as it was discribed in my case: My child was kidnaped by my wife in August 1982. Despite the fact that Virginia had and still retains continuous jurisdiction over my son, Fairfax commonwealth attorney refuses to prosecute the abductor because my wife was residing in Maryland at that time and had custody of our son.

On the other hand, the Maryland state prosecutor refuses to prosecute because the Maryland statute protects only the custodial parent but not the child, and not the visiting parent.

Moreover, the FBI's cooperation in helping parent-victims is less than commandable (as one example of that I attach my letter to the FBI director Mr.W.Webster).

Child snatching have an enormously harmful effect on the children, according to the most experts in that field. Moreover, it is a crime and has an equally devastating effect on the parent-victims: "To seek revenge on a spouse - either mother or father - by depriving nurturing adults of their children is a crime...", Dr. John W.Jacobs, director of outpatient psychiatry at Montefiore Medical Center in New York.

Future of any society, including ours, depends, in part, on our children' bringing-up. There is a significant connection between the juvenile delinquency and "broken" home conditions. Parental kidnaping only exacerbates this problem.

It is urgent to have a federal law which will both deter effectively childnapings and prevent irreparable damages to the thousands of children and parents involved.

The Congressman Sensenbrenner's Bill HR 2162 with minor modifications can serve to these purposes. Such Bill should be enacted without delay for the sake of our children.

Vladimir M. Etlin,

7403 Lisle Ave,
Falls Church, VA 22043
Tel.: (703) 684-6607 day
(703) 356-3506 eve

attached: letter to the
FBI director

April 15, 1983

Dear Mr.W.Webster:

The FBI is not complying with your instructions as outlined in your letter to Senator Hawkins of February 18,1983.

My son was kidnaped from Virginia by my ex-wife in August 1982. I had no communication with my son ever since. Local authorities refused either to prosecute or to conduct investigation and search for the child and abductor. Variety of grounds were given including: no crime was committed because she had custody at the time of abduction (I have custody now), or that Virginia has jurisdiction over the child but not over the abductor, because she was a non-resident. All grounds are unwarranted.

I reported to the FBI (Alexandria division, agent Mr.McCabe) on March 14, 1983 and signed my complain on March 18, 1983. After prolonged consultations with his superiors, two weeks later, Mr.McCabe advised me that no action will be taken to locate the abductor, and that my son's name will not even be put on the NCIC.

It seems that as soon as one parent becomes a non-resident he/she can kidnap a child without punity because the FBI's "role as servants of the public" and its "utmost concern for and empathy with the emotional trauma which a victim's parents, guardians or family members undergo" ceases to exist.

Please let me know as soon as possible if the FBI can help in apprehending my wife-childnapper while trail is still hot.
Every day spent by my son in hideout is detrimental to his physical and mental wellbeing.

Yours truly,

Vladimir Etlin,

7403 Lisle Ave.
Falls Church, VA 22043
Tel.: (703) 684-6607

CHILDREN'S RIGHTS OF
PENNSYLVANIA, INC.
P.O. BOX 2764
LEHIGH VALLEY, PA 18001

May 22, 1983

EXPRESS MAIL

The Honorable Arlen Specter
United States Senate
Washington, DC 20510

Dear Senator Specter:

I feel it is entirely appropriate for the United States Senate sub-committee on Juvenile Justice to be conducting a hearing on remedies and solutions to the national tragedy of parental kidnapping on May 25, 1983. As you well may know, this date has been unofficially pronounced as NATIONAL MISSING CHILDREN DAY. I hope this letter will contribute effectively to other testimony provided at this hearing.

As a custodial parent of children who have been victimized by a parental abduction and who after 11 months still have not returned home, I consider that the passage of Federal legislation, such as H.R. 1322 and H.R. 2162 should be utmost in your consideration of our youngest citizens' safety and welfare.

The epidemic proportions of the phenomenon of parental kidnapping speak for themselves. CHILD FIND, of New Paltz, NY, estimates that there are 100,000 parental abductions per year. The NATIONAL MISSING CHILDREN'S LOCATE CENTER, Portland, OR, adds that the death of 4000 children result from parental kidnapping. This fact, and that most abducting parents have a record of child abuse and 60% have criminal records, concern me most. It does not provide any comfort when I am told, "But they're with their mother; at least they're safe."

There is no other emotional experience equal to the devastating psychological trauma experienced by abducted children, the custodial parent victim, and even the abducting parent as a result of kidnapping. Even death can eventually be accepted; the horror of a kidnapping lingers indefinitely. Abducted children are fed a bunch of lies, i.e. "Daddy (mommy) is dead" or "Daddy (mommy) doesn't love you". Parental kidnappers destroy children's lives.

While most States have realized the severity of the problem and have adopted stricter felony statutes governing interference with custody, there is still a definite need to establish Federal laws to provide uniform and proper resolution to and prevention of the kidnapping of our children. This is an area of law that is almost totally ignored. Many law enforcement agencies refuse to even take a report; the priority of child stealing lies well below most other crimes.

While in California recently, I had requested the assistance of the Los Angeles County Sheriff's Department to search a particular residence where I suspected my children and their mother were living. Even though my Pennsylvania custody papers were in order and an Exemplified Record had been filed in California, I was advised that I must first obtain a California Warrant in lieu of Habeas Corpus for the arrest of my children. Without it, my children could not be put in my custody, but their mother could advise as to whom should have physical custody! As a result, I spent two days in court and $750 in legal fees, only to find out later that the children were not at this address. Over the last year I have spent approximately $20,000 for attorneys, private investigators, and travel expenses in trying to locate my children.

I firmly believe that had there been an effective Federal law prohibiting parental kidnapping, this experience might never have happened. Any Federal law now imposed must be sufficiently stringent to act as a deterant to kidnapping and provide Federal assistance in locating children being held hostage out of the State of jurisdiction by their abducting parent.

Sincerely yours,

Charles Blickhahn

Charles Blickhahn
Co-Director

TESTIMONY OF KATHY ROSENTHAL

Executive Director of Children's Rights of Florida, Inc.

MR CHAIRMAN:

I thank you for the opportunity to address this subcommittee today about the complexity of the missing children problem. My name is Kathy Rosenthal. I am Executive Director of Children's Rights of Florida, Inc., a not-for-profit corporation working at the international level to secure the location and safe recovery of missing children. We were incorporated in October, 1982, and we were formed to assist other parents experiencing a similar tragedy to our own - a missing child.

My husband's then four-year-old son was abducted on September 9, 1981 by his non-custodial mother, who removed him from the State of Florida, went to New York, illegally obtained a passport, and from there travelled to Israel. She later returned to the United States with the child, whom we ultimately located and recovered on October 27, 1982.

To our dismay, we learned that there was simply no help readily available to us from the police authorities in the jurisdiction where the abduction had taken place. Every time we called to make a police report, we were told that they couldn't help us, it was a civil matter. When we called the State Attorney's office, we were told we had to file a police report.

Finally, after seven months of this, I went to the public library, pulled out a copy of the Florida statutes concerning custodial interference and discovered that the crime was a third-degree felony. Still, the state tried to discourage us from filing charges, claiming that the civil contempt warrant would be just as helpful as a felony warrant. At last, through the never-ending help and patience of Jay Howell, Chief Counsel of the Subcommittee on Investigations and General Oversight, and Patricia Hoff, Director of the American Bar Association Child Custody Project Clearinghouse, who mailed to us an invaluable tool for our search, the monograph entitled Interstate and International Child Custody Disputes, we were able to begin to understand the complexities of the issue, how to obtain warrants, which warrants to obtain, and how they work. After the state felony warrant was issued, we requested a fugitive felon warrant from the Justice Department so that we could obtain FBI assistance. Naturally, we found ourselves up against the Justice Department guidelines for the issuance of an Unlawful Flight to Avoid Prosecution (UFAP) charge in a parental abduction case. It took us four additional months to meet the criteria (independent credible information that the child is now in a condition of abuse or neglect) required to obtain the UFAP. After the Federal Warrant was finally issued, it was low priority, basically placed on the shelf.

Throughout our search for our child, I encountered unbelievable ignorance of the law on the part of those persons responsible to make decisions about warrants. The police detectives were not aware that a felony crime had been committed, nor did they place any importance on it once warrants were issued. Even the local Assistant U. S. Attorney we contacted told my husband that a "kidnapping" warrant would be issued against his ex-wife if we proved prior abuse, and he should realize that that was a "capitol" crime, punishable by DEATH.

When the federal warrant was issued, we were told that there was little they could do to locate the child; no phone taps, no mail watches, because a federal statute had not been broken, so, therefore, there was no grand jury investigation.

What we found at the end of our long struggle to get all appropriate warrants can be summed up by what the first felony detective on the case told us. "You find her, and we'll arrest her". And, in the end, that is exactly what we did. The fifth private detective that we had work on the case solved it. That left four others who simply did not have the right contacts to solve a missing child case, yet they eagerly accepted fees for the search. Parents are being robbed of their entire life's savings by unscrupulous private investigators who prey on grieving parents who have been told by police and Government authorities, "You find them". There's no price too high when a person promises to find your missing child. Over and over again, parents come to me with the same stories. Missing children, no help from any level of Government, unknowledgeable attorneys, no protection from the courts, and bilked out of thousands of dollars when they turn to the only help that is available. The missing child problem is turning into a high-profit, money-making business where the children are the losers. The low-income or indigent parent will probably never see their child again, while the parent with financial resources has a much better chance.

The plight of our nation's children is appalling. Our constitution ensures every citizen the right to life, liberty, and the pursuit of happiness, without regard to race, color, creed or majority of age. And yet, each year, there are hundreds of thousands of our nation's minor citizens being denied these inalienable rights, even the right to live, as adult citizens abduct, imprison, beat, molest, abuse, rape, torture, exploit and even murder their minor children. The most horrifying fact of all is that the majority of these adult citizens are not strangers to the child, but rather, one of the child's own parents or relatives.

And yet, the searching parent hears repeated over and over again the myth, "at least the child is 'safe', he's with his own parent". That is not much consolation to a parent who has been beaten and abused by a violent, temper-prone spouse, or who, in the past, has stood in the middle as a buffer between the abusive parent and the child. One can only imagine the horror and frustration that the searching parent in this situation must feel when faced with the antiquated notion that any situation between parents and children are domestic disputes in which police refuse to get involved. Anyone who is familiar with the statistics of child abuse (approximately 1,000,000 reported cases each year) has to realize that the victim of a parental abduction is, indeed in very grave danger. I believe it is important here to take into consideration the type of personality we are dealing with. A cross-section of the cases in our files profiles the parental abductor as follows:

1. vengeful
2. bitter
3. generally unstable
4. emotionally immature
5. abusive
6. alcohol or drug dependent

Since the child is rarely taken out of a sense of love and concern, and experts agree that the prime reason for a parental abduction is revenge, it is easy to see how a child in this situation will quickly become excess baggage and a source of aggravation, although still very much a tool for revenge. At this point, the child is often badly abused and even abandoned with other relatives or in foster homes, where the abuse of the unwanted child continues. (Some case histories follow).

Take an unstable or immature personality (bitter, alcohol dependent, abusive, etc.); add to that tension and stress (fugitive on the run, hard to find work, not enough money, identity change, full-time responsibility for child, etc.); then add BLAMING CHILD (it's all your fault I can't find a job, see what I gave up for you, etc.), then take away real love for the child (wouldn't have removed from other parent child loves, friends, school, pets, etc.), and minus an understanding for the emotional trauma to the child (misbehaving, bed-wetting, bad dreams, crying for other parent); and that equals abuse of the child.

Parental kidnapping is child abuse in the strongest sense of the term. At best, the identity changes, instilled fear of police authorities, lies about other parent (he died, she doesn't love you anymore, etc.), separation from a parent the child is psychologically dependent on, and the fugitive lifestyle in general, constitutes a harrowing form of emotional abuse; at worst, as pressures mount, the very life of the child is at stake.

Another misconception that abounds, and is not dealt with in may state statutes, is the idea that it is perfectly all right for a parent to run away with and conceal a child before there has been established any award of custody by a court; or for a custodial parent to do so in violation of a visitation order. Any child whose whereabouts are concealed from one of their natural parents is a missing child, regardless of the status of custody. According to statistics, more than half of all parental abductions occur before any court takes action, while custody is yet unclear. Who disappears with a child before any court issues a directive? A parent who feels that, because of drug abuse, child abuse, spouse abuse, or any other number of abuses, they don't stand a chance to win custody in a Court of Law.

I feel it is important here to mention, also, the role of the friends and relatives of the abductor who are involved in the scheme to abduct and conceal a child. Never have I handled a parental abduction case (our own included) that there has not been one or more of the abductor's relatives actively involved in concealing the whereabouts of the child, offering financial and emotional support, and often openly admitting to the searching parent that they know the location of the missing child. These people who are aiding and abetting a criminal act should be prosecuted for their involvement.

John, age 5, was abducted in October, 1982 by his father, prior to the issuance of any court decrees. About mid-November, his mother called us frantically. The Sheriff's Department had suggested that she call us for assistance, because, with no court order, no crime had been committed. "My attorney says that, until we serve him with a petition, I can't get custody and get him back. But, if I find him, and serve him, he's likely to kill my little boy". We directed her to an attorney who is an expert in interstate custody. He obtained a temporary custody order to her ex parte. We located the child for her in December and he was safely restored to his mother's custody. A telephone call we received from her a few days after the recovery confirmed the worst.

> "Mommy", John had said. "I don't understand what daddy meant when he circled a day on the calendar in red ink and said, on that day we are going to take pills together, and then we'll be together forever".

The date circled was less than two weeks away. Thank God, a murder-suicide had been prevented.

Alan, age 18 months, was abducted in December, 1978, by his non-custodial father, whom he hadn't seen since four months of age. He was removed from the State of Florida, taken to Connecticut, and left at a foster home. A couple of months later, his mother traced him to the foster home and went to get him. The father was tipped off and got there first, running off with him again.

Alan's father has dual citizenship, American and Arabian, but he couldn't return to Arabia because he was wanted for attempted assassination of a key political figure. He was addicted to valium and got crazy when he drank too much. Since Alan's mother registered with us a few months ago, we have almost tracked him down twice. Once, we were only one week behind him. He's very transient and moves every few weeks. A boy, approximately Alan's age, has been seen travelling with him, even though his mother has received anonymous telephone calls stating that Alan is dead.

Ricky and his sister were missing for four years. Nobody classified them as "missing children" because their custodial mother had disappeared with them in violation of a mere visitation order. We found the children - in the custody of the State of Virginia. Their mother didn't want them any more, but the desire for revenge went on. "The state can have them, before I'll give them to him". Ricky and his sister had been told their daddy didn't love them any more and didn't want them. The children are now in the legal custody of their father - who loves them very much.

James, age 5, was abducted by his mother. After years of abuse at the hands of her boyfriends, he was finally going to live with his beloved daddy. But his mother swore to his father "If you win custody, I'll fix you, I'll spite you, you'll never see your son again". Fourteen months later, we found Jamie. He had eight scars on his back that weren't there before he was abducted. He couldn't remember how he got most of the scars - except one. That was when his mother's boyfriend held him down and burned him with a lighter. "When I'm good, he bruises me, when I'm bad, he bruises me", Jamie said. Jamie's in therapy. The visible scars are fading. The emotional ones will be there for a long time.

Three-year old Jennifer is still missing. She was very attached to her mommy. Her daddy was a trucker and was gone a lot. He didn't pay much attention to her when he was home, either. But he used to drink a lot, and hurt her mommy a lot. One of her mommy's front teeth is yellow and chipped from being hit. Her mommy only prays that Jennifer is a very good girl and doesn't get her daddy angry - especially when he's drinking.

Thirteen-year-old Danny has been abducted by his father four times. The last time was almost two years ago. Each time he was taken, he was dragged off screaming. One time, a professional kidnapper grabbed him. He's a very sensitive child - afraid of the dark. He's also very afraid of his father's violent temper. He's probably not in school. His dad never believed much in education.

The statistics on parental abduction are staggering. The conservative figure is 100,000 per year. The more realistic estimates are from 250,000 to 400,000 abductions per year. Missing children are a national tragedy, an epidemic. The disregarding of civil court orders are a national embarrassment. We've discussed the causes and effects of this problem. Now, let's address its' remedies.

First, the United States Government must understand that, as long as this problem is being handled on a state level, it is only going to grow worse and worse. The subject area simply cannot be controlled by state laws and state decrees, which are vague, haphazardly enforced, and hopelessly riddled with loopholes.

This particular crime has a unique basis in interstate traffic and transportation. In the typical scenario, the child is removed immediately from the state which has issued the decree, or which has jurisdiction over the child. This is done in order to frustrate custody decrees, and investigations by the state from which the child was taken. The word is out to the general public that if you steal your child, the worst that can happen to you, if you are unlucky enough to get caught, (which isn't likely), is that you may get a little probation, probably adjudication withheld. The "word" has got to change. It is the responsibility of the Federal Government to write into law a new statute, making parental abduction a Federal offense, which is strictly enforced, and upon conviction requires some jail time AND the making of restitution to the Federal Government for the expenses incurred in locating the abductor.

I would like to state that I am extremely encouraged by the Justice Department's new policy, which, for the trial period of one year, has rescinded the guidelines which require proof of abuse and authorization from Washington for fugitive felon warrants. However, I am quite concerned about what will happen at the end of that trial year.

A proposed Federal statute to amend Title 18 of the United States Code to prohibit the interstate restraint and concealment of children in violation of rights of custody and visitation might contain the following:

1. Any person who intentionally restrains or conceals a child in violation of another person's right of custody or visitation or, with criminal intent, prior to the issuance of any court order, shall be fined not more than $10,000.00, or imprisoned not more than six months or both, and shall make restitution for expenses incurred in the search, unless,
2. A child is removed from the boundaries of the United States, the fine shall not be more than $10,000.00, and imprisonment for not less than one year, or both, and restitution shall be made for expenses incurred by the search.

3. The provisions of this statute shall apply if:
    a. The child is transported in interstate or foreign commerce.
    b. The child is removed across a state boundary or a United States boundary.

4. In the absence of facts indicating a lack of Federal jurisdiction, the failure to release a victim of the offense within thirty days of the offense will create an irrefutable presumption that movement of the victim across a state or United States boundary has taken place.

5. "Conceal" means not to reveal the whereabouts of the child.

6. "Restrain" means to restrict the movement of the child without consent of the person whose right of custody or visitation is violated, so as to interfere with that child's liberty, by:
    a. Removing him from his place of residence or school; or,
    b. Confining him any place, or moving him from one place to another.

7. It is a bar to a prosecution under this section that, in the case of a first offense, the person alleged to have violated this section returns the child unharmed not later than thirty days after the issuance of a warrant for the arrest of that person.

8. Any sentencing guidelines shall include a reduction in the term of imprisonment or fine or both, in any case in which the defendent voluntarily returns the child unharmed, although restitution must still be made.

Parental kidnapping is a crime against children which must be strongly fought from the highest level of Government. Studies show that all abducted children are severely emotionally traumatized by this event. What of the great percentage of children who are never found - who never receive the psychological therapy that they need? It is a fact that abused children become abusive adults. I shudder to think what our society will become when these hundreds of thousands of emotionally disturbed youngsters reach adulthood. Now is the time to put an end to this vicious cycle, and the only way that will be accomplished is with strict laws, tough penalties - and strong enforcement of these laws.

I pray to God for our nation's suffering children. And, in so doing, I pray for the very future of our great country.

STATEMENT OF JODY BRANT SMITH, M.A.

My thanks to Chairman Specter, and the Senators of this Subcommittee; to Senator Hawkins; to the staffs of each, with appreciation to Ms. Winter, who mediated all factors required for this testimony to be entered into the Record of today's hearing.

The proposal before you today would seek to extend the scope of the 1980 (Pepper) "Uniform Custody Act", effectively reducing to zero the alternatives available to states any resident of which is a noncustodial parent presently living with his or her children. By a manner or mode of "extradition", both the minor child and the parent would be swiftly transported to the state originating the custody order subsequent to dissolution of marriage. My perusal of the original law suggests that this was its intent, but that some individual statutory bases remained as obstacles in some few states. I believe this synopsis essentially correct, and shall predicate my remarks on it.

I testify against the present proposal. I further testify against any proposal of even remotely conceptual resemblance to that before you.

Whereas I do not approve the practice of absconding with one's child across state lines, I disapprove still more the recommendation that said troubled individuals be treated in a manner barely fit for felons. And they are not felons, even if the absurd nomenclature of "kidnapping" be introduced by some groups of people today: kidnapping has historically been a means, not and end; ransom and/or personal injury have never been the goals of people who remove their children from the domain of a former spouse.

Ours has become, apparently, a society in decline. One does not have to read Plato or Spengler to see evidential signs but, perhaps the most telling is our common practice of post hoc positing of superficial solutions. Industrialized abortion, in a society the first ever to enjoy the availability of before-the-fact contraception, is one asinine example of this. Whereas our forefathers (and mothers) made Declarations, we are tending to produce an excessive number of laws, many of which quite miss the point they ostensibly exist to cover.

Obviously, I believe that to be the case with statutes or proposals urging "uniform" custody.

To me it appears that the role of the legislator directly involves the striving for good legislation, not mere ornament; still less, arbitrarily repressive. I think you will concur.

The central question before us today then, ought not to be an orchestration to merely curtail the undesirable effect; it ought to be to go to the source. We want to see a decline in custody-dispute child displacements (which, by the way, must be separated, as many have not, form incidents involving actual kidnapping and/or missing status, wherein the health and safety of the child is very much more open to question). Instead of employing a straight-jacket approach, let us humanely search out the root cause for the clearly desperate behavior of individuals displacing their sons and daughters.

One does not have very far to search. The cause of the aberrant behavior lies directly in the matter of inequitable—indeed, often unbelievable—custody rulings made daily through the United States.

It cannot be overemphasized as a central thesis: if only if the matter of the custody of minor children in divorce proceedings be significantly improved will the "child-snatching" phenomenon permanently decline. There can be no doubt but that the majority, the great majority of the absconders are males. Let there be no hesitancy in my stating that it is fathers who are at the present time being subjected to grotesque manipulations within the judicial system. Today, in virtually only a male offender, but one who has been arbitrarily deprived of much of his opportunity to be with his child or children; and this, frequently, is conjoined with punishing child-support directives the dispersal of which he is never allowed to be privy.

The overarching solution to the problem of the involuntary removal of minor children from their custodial parents is the immediate implementation, on a state by state basis, of joint-custody/conservatorship.

It is an able surmise to say that ninety nine percent of the present offenders never had the opportunity of this rational, alternative concept of custody, or conservatorship as it is more appropriately called. It is a welcome fact that several states have recently adopted automatic joint-conservatorship statues. It is hoped that many more will rapidly follow, making as has not always been done, the law retroactive.

In those states not presenting a prima facie joint conservatorship, few quarreling spouses agree between themselves on such a genuinely honorable, self-respecting solution. Of those that do, unscrupulous psuedo-professionals almost always manage enough exascerbation of existing wounds to defeat the point. Indeed, it ought to be said that if one is looking to understand specific motives for "child-snatching" he or she ought to look into the civil court room of today (for no one unacquainted with the condition would in any wise believe), and become witness to the fact that the litigants are literally unable to speak unless spoken to, under penalty of contempt. Rhetoric replaces rationalism. Both husband and wife are typically plastic pawns in the hands of an adversary system of law. With this but one of the many credible emotions repeatedly repressed, there is no mystery whatsover regarding subsequent, reactionary, activity.

The nuclear fact to be extracted from this miasma is as follows: Contemporary dissolution of marriage is (generally) defined as "no-fault"[1] in classification: but, the child-custody laws have never been readjusted to interface with the liberalized divorce. It has been left to presume, falsely, that someone is to blame, necessarily. And this is, from decades past when divorce was exceedingly rare, the husband/father.

This no longer applies. And so I reiterate what I have already said. Until the child custody laws, through something in the context of joint-conservatorship become ubiqitous, quit unnecessary pain will be the lot of hundreds of thousands of otherwise honest and good citizens.

For we cannot have it both, contrary, ways. Observe the popularity of "child-support enforcement units" throughout the nation. Now look at the "child-snatcher". No one can seriously say that American fathers today are, at one and the same time, one class only! Some are irresponsible. Some are not. This latter group includes the reactionaries we are studying today. Their trouble is, in an insensitive but larger group, that they care too much. Of course this a "Catch 22" stereotype.

Before submitting suggestions to complement the general solution of joint-conservatorship already mentioned, I wish to raise one further, extremely important, matter. Is there any time or condition under which the "secondary" or "absent" parent has a right and a responsibility to remove his or her child from the domicile of the primary custodian? I think that there is. When the child or children's life is in danger, or something of that sort, you may say. And I agree. But that, however, does not address the equally undeniable albeit subtle harm by psychological injury.

What, then about the not-less-than five hundred thousand (many say the number is realistically nearer one million) children whose primary custodian has nor remarried but is "living with" a member of the opposite sex? When this situation occurs, what is the secondary parent to do? Is he (or she) to go to court? Ideally, the answer is undoubtedly, yes. But what if the child, often small child, calls the absent spouse for help, is in fact living in fear? What then? I can assure you from unspoken but sober personal experience that this is an excruciating dilemma. This is a matter deserving its own Senate Hearing, and I urge respectfully that such be quickly effected. For, indeed, even the judicial remedy is far from certain in outcome. An Illinois case with which I am conversant did in fact review before the United States Supreme Court with benefit to the person obtaining custody on this basis. But, sadly, it has as yet been ignored throughout much of the nation, and languishes, not having be made the precedent common sense would expect.

For loud outcry to the contrary, a disinterested history will show that, barely twenty years ago, there were no such notions as "single-parenthood". The family as an institution of paramount importance can be observed not merely for centuries, but for millenia; nor is the case restricted as claimed to the Judaeo-Christian (and thus "religious") tradition: the institution of the family has been hononed equally in Japen, China, and India, as well as in our Western Civilization. Therefore, if people must divorce, it appears more than reasonable that the existing state insist that, and allow for, the survival of relationship equitably distributed, between both partners; both parents *and* children.

What are the suggestions of supplementary or complementary nature mentioned earlier? I will list of many only three:

(a) Require counselling for all members of the dissolving family, counselling together, both before, during, and after this process.

(b) Seek diligently to confirm in the divorcing parents a *voluntary* joint conservatorship; explain this as not only the right, but the responsibility, of both. This includes the placement of lawyers who are also psychologically able, and an firm end to the present, sad system of adversary/two attorney practices.

(c) Lastly, require that there be created, throughout the land, separate courts with independent judges for civil/domestic cases. Today's judges try to operate effectively in both criminal and in civil contexts, which is unfair for them and, for all civil litigants.

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[1] This should not be taken to imply the writer's endorsement of "no fault" divorce laws.

For this opportunity to testify, again my thanks.

SUMMARY OF SUBCOMMITTEE REVIEW OF PARENTAL KIDNAPING COMPLAINTS RECEIVED BY THE FBI IN 1982 AND THE FIRST THREE MONTHS OF 1983

PARENTAL KIDNAPING CODING FORM

Valid Cases for 1982

Complaint Referred By:

239 Valid Cases for 1982

Violation of
valid order
Interstate Flight
(TOTAL=370)

U.S. Attorney 2
State Attorney 5
Parent's Attorney 13
Other
Local Police 19
Parent/Relative 109
Unknown 62

Location of Incident by State:

Ala 10
Alask
Ark
Ariz 2
Cal 10
Co 5
Conn 1
Dela
Fla 12
Ga 5
Hawaii 2
Idaho 1
Ill 17
Ind 9
Iowa 1
Kan 3

Ky 5
La 1
Mass 9
Md 4
Maine
Mich 10
Minn 9
Miss 10
Mo 4
Mont
N.C. 1
N.C. 1
Neb 2
Nev 3
N.H.
N.J.

N.M. 2
N.Y. 10
OH 15
OK 3
Ore
PA 1
RI
S.C. 4
S.D.
Tenn 4
Tex 26
Utah 3
VA 7
VT
Wash 7
Wisc 2
W.VA
WY

D.C. 1
Territories
Unknown 1

Time Between Incident and FBI Report (In Months)

(1) 174
(2) 46
(3) 13
(4) 7
(5) 4
(6) 3

(7)
(8)
(9)
(10)
(11)
(12)

1-2 yrs
2-3 yrs
3-4 yrs
4-5 yrs
more than 5 yrs
Unknown

Refuge State

Ala	2	Ky	4	N.M.	2
Alask		La	4	N.Y.	6
Ark	1	Mass	2	OH	2
Ariz	3	Md		OK	8
Cal	24	Maine		Ore	7
Co	10	Mich	4	PA	5
Conn		Minn	3	RI	1
Dela		Miss		S.C.	4
Fla	3	Mo	1	S.D.	
Ga	5	Mont	2	Tenn	5
Hawaii	2	N.C.	4	Tex	17
Idaho		N.C.		Utah	1
Ill	7	Neb	3	VA	5
Ind	1	Nev	2	VT	
Iowa	1	N.H.		Wash	2
Kan	3	N.J.		Wisc	2
				W.VA	
D.C.	2			WY	1

Territories

Foreign Countries 15

Unknown 25

Children Snatched:

1	169
2	56
3	10
4	
5	

Child Victim

Sex: M 179

F 141

Race: W 262

B 19

Other 13

Age:

1	12	10	11
2	48	11	12
3	30	12	15
4	31	13	5
5	39	14	3
6	21	15	2
7	27	16	3
8	29	17	
9	16	18	

[illegible]	AGE	Father
9	15-20	4
37	21-25	22
50	26-30	52
38	31-35	42
15	36-40	33
5	41-45	14
2	46-50	3
	51-55	1
	56-60	
	61-65	
	Over 65	

Kidnaper's Identity

Mother	83
Father	152
Other:	9
Sex: M	6
F	3

Relationship to Child:

Relative	7	Friend	1
Stranger	1		

Right of Custody:

Mother 149

Father 61

Other (specify) 10 Grandparent, 18 State

No Legal Custody

Type of Kidnaping:

Intrastate

Interstate 200

Internat'l 19

Unknown 2

Action on Case

Active FBI Investigation 7

Referred to local authorities 189

No action 1

Unknown 25

Background	Active FBI Investigation NO	YES
State Felony Warrant	21	1
UFAP Requested by locals	15	5
USA Authorization		5
USA Declined	13	
UFAP	2	5
Guarantee state extradition	8	
Kidnaping		

SOURCE OF INFORMATION

If Child in Danger,Defined by:	Complainant	Relative/Friends	Independent (Courts,police,schools
Physical Abuse	11	1	9
Emotional Abuse			1
Neglect (food, shelter)	3		1
Medical Inattention	3	2	
Physical Danger (gun,alcoholism)	5	4	5
Psychiatric Illness	7	5	7
Morality/Lifestyle	3		1
Sexual Abuse	1		4
Domestic Violence	3		2

10

PARENTAL KIDNAPPING CODING FORM

78 VALID CASES FOR 1981 thru March [illegible] 1982 → Violation of court order Interstate Flight (TOTAL=100)

Complaint Referred By:

U.S. Attorney 1

State Attorney 1

Parent's Attorney 1

Other 5

Local Police 5

Parent/Relative 66

Unknown 23

Location of Incident by State:

Ala	1	Ky	2	N.M.	0
Alask	0	La	5	N.Y.	3
Ark	2	Mass	1	OH	2
Ariz	1	M	0	OK	7
Cal	8	M no	0	Ore	0
Co	2	Mich	1	PA	1
Conn	0	Minn	1	RI	0
Dela	0	Miss	1	S.C.	2
Fla	6	Mo	1	S.D.	0
Ga	6	Mont	0	Tenn	6
Hawaii	0	N.C.	1	Tex	4
Idaho	0	N.C.	0	Utah	0
Ill	8	Neb	1	VA	0
Ind	0	Nev	1	VT	0
Iowa	0	N.H.	1	Wash	0
Kan	0	N.J.	3	Wisc	0
D.C.	0			W.VA	0
Territories	0			WY	0

Time Between Incident and FBI Report (In Months)

(1) 58

(2) 20

(3)

(4)

(5)

(6)

(7) 1

(8)

(9)

(10)

(11)

(12)

[illegible] yr

2-3 yrs

3-4 yrs

4-5 yrs

More than 5 yrs

Unknown

Refuge State

Ala	7	Ky	0	N.M.	0
Alask	1	La	0	N.Y.	1
Ark	1	Mass	1	OH	1
Ariz	1	Md	1	OK	0
Cal	1	Maine	0	Ore	1
Co	1	Mich	1	PA	2
Conn	0	Minn	1	RI	0
Dela	0	Miss	2	S.C.	0
Fla	4	Mo	1	S.D.	0
Ga	0	Mont	1	Tenn	1
Hawaii	0	N.C.	2	Tex	5
Idaho	0	N.C.	0	Utah	0
Ill	2	Neb	0	VA	0
Ind	3	Nev	0	VT	0
Iowa	0	N.H.	0	Wash	3
Kan	0	N.J.	1	Wisc	0
				W.VA	0
D.C.	0			WY	0

Territories 1

Foreign Countries 6

Unknown 23

Children Snatched:

1	60
2	15
3	2
4	
5	

Child Victim

Sex: M 61

F 36

Race: W 76

B 9

Other 3

Age:			
1	12	10	2
2	10	11	1
3	11	12	6
4	12	13	1
5	7	14	0
6	10	15	1
7	6	16	0
8	6	17	0
9	7	18	0

Mother	AGE	Father
	15-20	1
8	21-25	12
21	26-30	19
15	31-35	16
12	36-40	10
6	41-45	2
	46-50	1
	51-55	1
	56-60	
	61-65	
	Over 65	1
1	Unknown	

Kidnaper's Identity

Mother 25

Father 46

Other: 7

Sex: M

F 5

Relationship to Child:

Relative 5

Friend

Stranger

Right of Custody:

Mother ~~23~~ 49

Father ~~[illegible]~~ 17

Other (specify) 12 (e.g., grandparents, [illegible], State)

No Legal Custody 1

Type of Kidnaping:

Intrastate	3
Interstate	65
Internat'l	6
Unknown	3

Action on Case

Active FBI Investigation	4
Referred to local authorities	60
No action	1
Unknown	7

Background	Active FBI Investigation NO	Active FBI Investigation YES
State Felony Warrant	0	79
UFAP Requested by locals	1	16
USA Authorization	1	
USA Declined	1 (closed.. parent surrendered)	6
UFAP		
Guarantee state extradition		
Kidnaping		

(4)

SOURCE OF INFORMATION

	Complainant	Relative/Friends	Independent (Courts,police,schols
If Child in Danger,Defined by:			
Physical Abuse	2	1	
Emotional Abuse			
Neglect (food, shelter)			
Medical Inattention	1		
Physical Danger (gun,alcoholism)	4	3	1
Psychiatric Illness	4	3	1
Morality/Lifestyle	2		
Sexual Abuse	1	1	
Domestic Violence	1	1	

[From The Washington Post, May 14, 1983]

DONAHUE DAMAGES—TV COMPANY TOLD TO PAY $5.9 MILLION IN SUIT

Denver, May 13 (AP)—A federal jury decided today that television talk-show host Phil Donahue's production company must pay $5.9 million in damages for refusing to give a mother information about her son's whereabouts after her ex-husband discussed on television why he abducted the boy.

The award of $1.7 million in actual damages and $4.2 million in punitive damages from Donahue's producer came at the end of the second trial of the suit. The first ended last fall in a mistrial when jurors failed to reach a verdict.

"We were shocked," Donahue said of the verdict. "We certainly didn't expect a multimillion-dollar verdict. If we hadn't baby-sat for this child, there wouldn't be a case."

Willow Lynne Cramlet of Arvada, Colo., a Denver suburb, filed a $10 million suit against Mulitmedia Program Products Inc. of Cincinnati in 1981 after Donahue's staff refused to tell her the whereabouts of her son and the boy's father, Wayne R. Anderson.

Cramlet said she contacted Donahue's producer after Anderson appeared on two segments taped for the "Today" show in 1981 to defend his actions in taking their 3-year old son, Eland, in 1979.

She filed the suit when Donahue's staff refused to tell her where her former husband and her son were.

Anderson and his son have not been seen since the shows. The father has been a fugitive since a warrant was issued for his arrest by a Golden, Colo., state court judge in 1981, charging felony interference with child custody.

"I was put in a position where I had to do something," Cramlet said after the jury returned its decision. "It wasn't like I had a choice."

"With a certainty, there will be an appeal," said Frank Kennedy, one of the attorneys who defended Donahue's producer in the courtroom of U.S. District Judge Jim Carrigan.

"We, Phil Donahue and Multimedia Program Productions Inc., are extremely disappointed with the verdict," said Walter Bartlett, president and chief operating officer of Multimedia Inc., parent of Multimedia Program Productions. "We intend to appeal and do not expect this judgment to stand. We will take all the necessary steps to have the decision overturned."

Donahue testified in the trial earlier this week and told jurors, "I would do the same thing again, the same way."

His attorneys tried to convince jurors that program staff members only baby-sat with the child as a favor and would have broken professional rules by turning over the child to his mother.

Kennedy, who presented closing arguments in the second trial, said the show had not brought about the abduction in any way and said producers were merely trying to show a subject of wide national concern—parental kidnaping.

[From the Washington Post May 20, 1983]

THE TV COLUMN

NOW HERE'S THE NEWS

* * * * * * *

Police in Tulsa, Okla., Wednesday arrested a man accused of abducting his son from his ex-wife . . .

Wayne R. Anderson, 39, had appeared on the "Today" show with Phil Donahue to discuss his action . . .

Anderson was arrested on a Colorado warrant when police raided the apartment where he was living with his son Eland, now 7 . . .

Eland was reunited with his mother, Willow Lynne Cramlet of Arvada, Colo., who had not seen him since he was taken by Anderson in 1979 . . .

Police said the boy did not recognize his mother when they were reunited. She and Anderson were divorced in 1978 . . .

Police said Anderson had been working in Tulsa and Eland had not been attending school . . .

Just last week Cramlet won a $5.9 million suit against Donahue's production company after the firm refused to tell her where her former husband was living after his appearances on the "Today" show in 1981 . . .

That same year, she had filed a $10 million suit against Multimedia Program Productions Inc. of Cincinnati . . . after Donahue's staff refused to tell her the whereabouts of her son and his father . . .

Anderson had appeared on two segments taped for "Today" to defend his actions in taking Eland . . . and Cramlet maintained the company baby-sat her son while Anderson was being interviewed . . .

The first trial ended in a mistrial last September . . .

But last Friday a Denver jury awarded her $1.7 million in actual damages and $4.2 million in punitive damages from the production company . . .

Attorneys for Multimedia argued unsucessfully that they would have violated their professional ethics by surrendering the child or his father to authorities . . .

After learning the boy had been found, Donahue yesterday held to his contention his company had done nothing wrong . . .

"We strongly believe that we broke no laws here and we are confident that, based on law, this decision will be reversed on appeal. We are innocent. We acted in the public interest . . .

"Willow Cramlet wins because she recovered her child," the talk show host said. "Wayne Anderson wins because he has called national attention to the problem which besets many divorced fathers—a court system which they think favors the mother" . . .

Yesterday it was reported that Anderson, who faces child kidnaping charges in Jefferson County, Colorado, would return there by the weekend to fight the charges . . .

Anderson posted $5,000 bond on an Oklahoma fugitive charge . . . and his lawyer, Wendell Clark, said Anderson is innocent of the Colorado charge . . .

In a statement issued by Clark, Anderson said he had been unsuccessful in trying to reach custody compromises with his former wife and "is convinced that the boy is better off" with him . . .

Wednesday's arrest was coordinated through Stolen Children Information Exchange of Fullerton, Calif. . . . which Cramlet contacted two years ago for help in locating her child . . .

According to Laurie Cancellara, director of the nonprofit group, Cramlet appeared on "Good Morning America" recently . . .

A photograph of Cramlet's son was shown on the telecast and shortly thereafter she received two anonymous telephone calls saying the boy and Anderson might be in Tulsa . . .

A private investigator contacted by the agency coordinated the raid on Anderson's apartment . . .

Office of the Attorney General,
Washington, D.C., May 16, 1983.

The Vice President,
U.S. Senate, Washington, D.C.

Dear Mr. Vice President: Attached is the Department's fifth report to the Congress as required by Section 10(b) of the Parental Kidnaping Prevention Act of 1980 (Public Law 96-611). The report details the steps which the Department has taken to comply with the intent of Congress that Section 1073 of Title 18, United States Code, apply to cases involving parental kidnaping and interstate flight to avoid prosecution under applicable state felony statutes.

Sincerely,

William French Smith,
Attorney General.

Fifth Report to Congress on Implementation of the Parental Kidnaping Prevention Act of 1980

Pursuant to Section 10 of the Parental Kidnaping Prevention Act of 1980 (Public Law 96-611) (hereafter PKPA) the Department of Justice submits its fifth report to the Congress setting forth the steps taken by the Department to comply with the intent of Congress that the Fugitive Felon Act, 18 U.S.C. 1073, apply to cases involving parental kidnapings and resulting interstate or international flight to avoid prosecution under applicable state felony statutes.

Since the submission of our last report, the Department has undertaken another review of our policy guidelines limiting Federal involvement, under the Fugitive Felon Act, in felony parental kidnaping cases. Up to the time of this review, it was the Department's policy that, as a matter of prosecutorial discretion, the filing of Fugitive felon complaints, based on child custody related state felony offenses, would be authorized if, in addition to having probable cause to believe that a violation of the Fugitive Felon Act had occurred, and the requesting state law enforcement agency was committed to extradite and prosecute the offending parent, there also was independent credible information that the victim child was in physical danger or was then in a condition of abuse or neglect. Further, in an effort to achieve a uniform nationwide application of these policy guidelines, we required Criminal Division authorization prior to the filing of such complaints.

As a result of our review, a determination was made to suspend indefinitely the foregoing parental kidnaping policy guidelines. In short kidnaping felonies now will be handled on the same basis as other fugitive felon cases. By teletype dated December 23, 1982, directed to all United States Attorneys, we advised as follows:
To: All United States Attorneys

PARENTAL KIDNAPING—FUGITIVE FELON ACT

Reference is made to United States Attorneys' Manual, Section 9-69.421 (Parental Kidnaping).

Effective immediately the two requirements of USAM Section 9-69.421—that there be evidence that the victim child is in physical danger or in a condition of abuse or neglect, and that Criminal Division approval be secured before a complaint may be filed under the Fugitive Felon Act—are suspended until further notice. To allow the FBI and the Criminal Division to monitor the effect upon the Bureau's caseload resulting from this action over a one-year period, you are requested to continue to report requests for assistance to the Bureau whether or not complaints are authorized. In order to assist the Bureau in determining the appropriate priority to assign the warrant, you are also requested, when the initial contact is made with your office, to ascertain information relative to the danger to the child and others posed by the abducting parent. As in other fugitive felon cases the field office will assign the priority. Please bear in mind that the Fugitive Felon Act was enacted to assist the states in their efforts to apprehend and prosecute criminals who have gone beyond their jurisdiction. Accordingly, care should be taken not to authorize warrants where there is reason to believe that the state will not extradite and prosecute once the fugitive is located and arrested by the FBI. . .

It continues to be our practice to have the FBI compile and report data on all parental abduction complaints received rather than limiting the data to parental abduction cases in which state law enforcement authorities have charged an abducting parent with a felony offense and have sought assistance in apprehending the accused parent by requesting Federal authorities to charge the parent with fleeing from the state to avoid prosecuting in violation of the Fugitive Felon Act. We continue to find that the vast majority of parental abduction complaints received by the FBI come from sources other than state law enforcement agencies, and involve abduction episodes in which there clearly is no probable cause basis for seeking a fugitive felon warrant for the arrest of the abducting parent.

By memorandum dated April 15, 1982, the FBI furnished us with information relating to the collection of parental kidnaping data during calendar years 1981, 1982, and for the first three months of 1983.

Since our last report, the FBI again updated its analysis of the parental kidnaping data for calender year 1981. A total of 896 parental kidnaping complaint forms were received from 58 FBI field divisions covering 52 states and territories in 1981. One hundred and ninety-seven of these complaints concerned parental abductions which occurred prior to December 28, 1980, and apparently were reported to the FBI as a result of publicity received after passage of the PKPA. Of the 896 complaints received during calendar year 1981, it was determined that 689 either did not come from state law enforcement agencies or involved situations in which there was no probable cause to believe the abducting parent had violated the Fugitive Felon Act. Typically, in these cases, there was no violation of a child custody decree, or no state felony charge had been filed, or there was no evidence that the offending parent had fled the state. Such complaints were referred to local law enforcement authorities. The data indicates that during calendar year 1981, the Department took action on a total of 129 law enforcement requests for FBI assistance, under the Fugitive Felon Act, in apprehending fugitive parents charged with child custody related felony offenses. Consistent with the Department's then existing parental kidnaping policy guidelines, FBI involvement was authorized in 48 cases and was declined in 81 cases. The disposition of the remaining 78 complaints had not been reported to FBI Headquarters as of December 31, 1981. During calendar year 1981, a total of 22 fugitive parents were arrested. Ten arrests were made by the FBI, one by another Federal agency, and 11 arrests were made by local law enforcement agencies.

In calendar year 1982, 592 new parenal kidnaping complaint forms were received from 53 FBI field divisions covering 46 states and territories. Therefore, including the 78 complaints carried forward from 1981, a total of 670 complaints received consideration during 1982. Of these 670 complaints, it was determined that 474 either did not come from state law enforcement agencies or involved situations in which there was no probable cause to believe the abducting parent had violated the Fugitive Felon Act. These complaints were referred to local law enforcement authorities. During calendar year 1982, the Department took action on a total of 82 law enforcement requests for FBI assistance, under the Fugitive Felon Act, in apprehending fugitive parents charged with child custody related felony offenses. Consistent with the Department's then existing parental kidnapig policy guidelines, FBI involvement was authorized in 46 cases and was declined in 36 cases. The disposition of the remaining 114 complaints had not been reported to FBI Headquarters by December 31, 1982. During calendar year 1982, a total of 32 fugitive parents were arrested. Eighteen arrests were made by the FBI and 14 arrests were made by local law enforcement authorities.

During calendar years 1981 and 1982, a total of 117 state law enforcement requests for FBI assistance in child custody related felony offenses were declined. We think it is important to note that a substantial number of these requests were declined for reasons wholly independent of our parental kidnaping policy guidelines. For example, we regularly receive requests for FBI involvement in situations in which the accused parent was living at a known location in another state, or in which the accused parent had obtained a presumptively valid custody in another state. Clearly, there is no need for FBI fugitive hunts in such situations.

During the first three months of 1983, 106 new parental kidnaping complaint forms were received from 40 FBI field divisions covering 32 states and territories. Therefore, including the 114 complaints carried forward from 1982, a total of 220 complaints received consideration during the first three months of 1983. Of these 220 complaints, it was determined that 79 either did not come from local law enforcement agencies or involved situations in which there was no probable cause to believe the abducting parent had violated the Fugitive Felon Act. Such complaints were referred to local law enforcement authorities. In the first three months of 1983, FBI involvement was authorized in 38 cases and was declined in 3 cases. The final disposition on 100 complaints forms had not been reported to FBI Headquarters as of March 31, 1983. During the same period, a total of 8 fugitive parents were arrested. Seven arrests were made by the FBI, and local authorities made one arrest.

Since suspension of our parental kidnaping policy guidelines on December 23, 1982, authorization to file Fugitive Felon complaints in child custody related felony offenses is now a matter entirely within the discretion of the various United States Attorneys. The Criminal Division, of course, is available for consultation and advice on all fugitive cases.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., June 17, 1983.

Hon. WILLIAM FRENCH SMITH,
Attorney General of the United States,
U.S. Department of Justice, Washington, D.C.

DEAR ATTORNEY GENERAL SMITH: Thank you for providing representatives of the Department, Lawrence Lippe of the Criminal Division, and the Federal Bureau of Investigation, Wayne Gilbert of the Criminal Investigative Division, to testify on the federal response to parental kidnaping at the May 25 hearing of the Subcommittee on Juvenile Justice. The Subcommittee found their testimony and supporting documents to be most informative. In light of the reported absence of an increased number of parental kidnaping complaints received by the Bureau since the December 23, 1982 change in Departmental guidelines, the Subcommittee trusts that the Department will maintain its present state of compliance with the provisions of the Parental Kidnaping Prevention Act of 1980 (P.L. 96-611) beyond the designated one-year trial period.

To assist the Subcommittee on Juvenile Justice in continuing its oversight responsibility for the Parental Kidnaping Prevention Act, the Subcommittee requests that the Department continue to report to Congress through the 98th Congress on the extent of its involvement in parental kidnaping cases.

Your ongoing cooperation in our Congressional efforts to safeguard the welfare of our nation's youth is greatly appreciated.

Sincerely,

ARLEN SPECTER.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., August 15, 1983.

Hon. ARLEN SPECTER,
Chairman, Subcommittee on Juvenile Justice, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your letter of June 17, 1983, to the Attorney General, we take this opportunity to offer our ongoing cooperation in the Congressional efforts to safeguard the welfare of our nation's youth.

Your letter requested that the Attorney General continue reporting to the Congress concerning the Department's implementation of the Parental Kidnaping Prevention Act after the obligation imposed by the Act terminates on April 30, 1984.

Our office is willing to have the requested statistics collected and disseminated throughout 1984 and submit its last accumulation of statistics for the Departmental Report which would be due during April, 1985.

If it is agreeable, the submission will be from our office to the Judiciary Committee Chairman rather then by the Attorney General to the President of the Senate and the Speaker of the House.

We also take this opportunity to make special mention of the courtesies and cooperation extended to our office on numerous occasions by Mary Louise Westmoreland, Ellen Greenberg, and Jane Clarenbach of your staff.

If we can be of further assistance to you or your staff, please feel free to contact us.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General.

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